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HAND-BOOK

OF

ADJUSTMENT

OF

Loss or Damage by Fire,

FOR THE USE OF FIRE UNDERWRITERS;

BY

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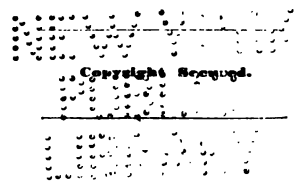
Of the North American Fire Insurance Company of New York.



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Introduction.

This HAND-BOOK is, with much diffidence, dedicated to the underwriting fraternity, in the hope that it may tend to supply, partially at least, a want long realized among local agents of reliable information as to the proper mode of adjusting fire losses, until something more complete and better adapted to the purpose shall be forthcoming.

No special claim to originality of ideas is made; it is rather a collection of scattered fragments of insurance wisdom, collated from a great variety of sources, freely appropriated, and brought into an aggregated form whence the tyro in the profession can gather the fruits, divested of technicalities.

In the preparation of the work, the aim has been to reach the more important facts appertaining to adjustments in the fire branch, and present them in the form in which they are generally accepted as the ruling of the courts, or as well recognized usage among underwriters; for which purpose every available source of information bearing upon the subject has been consulted, and the results digested in a popular form as concisely as due perspicuity and the limits of such a work would admit.

It is only necessary to add, that while no pretension is made that the subjects have been adequately treated in every particular, it may however be stated, with strict accuracy, that if the suggestions herein offered have no other merit, they may at least claim the distinction of being the only treatise upon the subject of fire adjustments exclusively, to be found in this country; and in this absence of any similar source of information, it is to be hoped that it may prove of some practical utility, and that it may fall into the hands of some one or more fire insurance agents, who will be glad that it has been made public; in which event it will have fully realized the expectations of

THE AUTHOR.

Definition of Terms

Used in fire insurance, and directly connected with the policy. Other terms and expressions are explained in the treatment of the several subjects.

The object sought in fire insurance is *indemnity* only; or simply security against loss by fire.

The issuing of a policy of insurance is termed *insuring* or *underwriting.*

The party issuing the policy is termed the *insurer* or the *underwriter.*

The party accepting the policy is the *insured* or *assured;* the latter term applying more particularly to life insurance.

The contingency insured against is the *hazard* or *risk.*

The property covered by the policy is the *subject,* or *insurable interest* of the insured.

The consideration is the *premium* paid.

The insurance is said to be *full,* when the total value of the subject is covered by the policy; or *partial,* when only a portion of the property is thus covered.

The loss is said to be *total,* when the damage to the subject covered by the insurance exceeds the amount of the policy; or *partial,* when the damage is less than the amount of the policy.

That proportion of the subject of insurance which may be saved from the fire, either in a sound or damaged condition, is termed the *salvage.*

Adjustment of Fire Losses.

The OBJECT of fire adjustments is to arrive definitely at certain facts, made contingent by the conditions of the policy upon the occurrence of loss or damage by fire to the subjects insured, by means of certain forms and processes intended to bring out and array the proofs or vouchers bearing upon such loss or damage, so that the amount of the liability of the insurer and the responsibility of the insured, under the terms and requirements of the contract of insurance, may be accurately determined and adjusted; to the end that, while the insured shall be justly indemnified for his loss, the insurer shall not be called upon to contribute more than his equitable proportion to the payment thereof.

The BASIS of adjustment is the contract of insurance, embracing the application with its representations and warranties, together with all written and printed conditions of the policy, as they may be modified or controlled by subsequent endorsements. In all cases the adjustment should be made up in accordance with the terms of the policy as given in the written portions thereof, without reference to any alleged verbal or other agreement between the insured and the agent not endorsed on the policy before the occurrence of the fire. Any claim of the insured for a different construction of the *intent* of the policy must be submitted to the company for consideration and approval.

The PROCESS of adjustment is simple or complex, according as the contract of insurance may be specific, general or mixed; and is based upon certain universally recognized *general principles*, which remain unchanged; yet there are issues constantly presented, arising from circumstances and conditions so varied, which have to be met and treated in so many ways, and under such a variety of aspects and phases, that adjusting *scientifically* may be termed an *art*, or more

properly speaking, a *gift* and *art* combined, only to be perfected, however, by long and varied experience, diligent study and close observation.

The DIFFICULTIES in adjustment may be said to arise from two causes, viz.: the *policy* and the *insured.*

First, and chiefly: *As arising from the policy*, either from the loose and indefinite manner in which some policies are written, leaving the adjuster in doubt as to what was, or what was not, intended to be covered, thus presenting a stumbling-block at the outset which will tax all of his skill and prudence to remove: or, from the variety of conditions of the various policies, often found in conflict upon the same loss: or, from that worst of difficulties, a want of some definite and uniformly recognized rule of contribution among the underwriters, when the insured may have policies of different kinds upon the same property, with different ranges of operation and bearing, and in several different offices, as is often the case in heavy mercantile transactions, thus presenting mixed, and often opposing liabilities, making the true *pro rata* apportionment of the loss among the companies at interest a very delicate question, and often very difficult of solution. This subject will be more fully considered under the head of "Apportionment of Loss."

Parol agreements between agents and insured are fruitful sources of great trouble in adjusting; especially when the agent, as is sometimes the case, takes sides with the insured against the company, under a mistaken apprehension of the true bearing of a verbal agreement in such cases.

Secondly: As arising from the insured; who may be divided into two classes, viz.: the *honest* and *dishonest.*

The *honest* are not unfrequently ignorant and obstinate; avaricious and suspicious; prone to over-valuation of their loss; without books of accounts or other vouchers upon which even an approximate estimate of the loss can be safely made, and while thus unable, or unwilling, to afford any assistance in arriving at the amount of loss are, nevertheless, ready at every turn adverse to their claim, to charge the adjuster with an attempt to defraud them of their rights.

The *dishonest:* As it is estimated that fully two-thirds of our fires are incendiary, originating in fraud, this class will naturally occupy a

large share of the adjuster's attention; and, inasmuch as parties who intend to defraud insurance companies in this manner, will lay their plans with more or ess skill and shrewdness, in order to avoid suspicion, they will require to be met with zeal, prudence and ability on the part of the adjuster. Such attempts are not unfrequently frustrated by a system of close watching and masterly inactivity, for they cannot bear the test of delay and constant scrutiny.

The GENERAL PRINCIPLES of adjustment are the same as those involved in the settlement of contested claims at common law, under ordinary contracts. The law defining the relation between the underwriter and the insured is the policy of insurance, with all of its clauses, conditions and stipulations, by which their mutual rights and liabilities are defined and measured; but inasmuch as the peculiar nature of a contract of fire insurance, in view of the undetermined contingencies for which it provides, necessitates the addition of numerous restrictive conditions for the adequate protection of the underwriter, not found in the ordinary business contract, so some nice points of distinction have been introduced to meet the requirements of these conditions.

It is a peculiarity in underwriting that laws relative to insurance have grown out of the business itself; the courts doing but little more than adopting and enforcing the conditions and usages of underwriters upon the principles of common law. Most of the statutes upon insurance have been framed to meet the requirements of particular cases, consequently many points still rest upon the decisions of the lower courts, never having been appealed for confirmation or reversal to the higher courts. While there are many enduring principles in the law and practice involved in these cases, yet the decisions have been in many instances fluctuating and often conflicting, turning in numerous cases doubtless upon side issues. Hence, as it will be impossible to give specific instructions applicable alike to all cases that may arise, the several subjects appertaining to fire insurance adjustments will be taken up and considered in that connection, under their respective heads, to the end that local agents may obtain sufficient insight into the *general* and universally recognized *principles* and usages governing fire adjustments to enable them to watch over and protect the interests of their companies in case of loss at their respective agencies, until such time as

an adjuster may arrive, or the parent office shall authorize them to undertake the settlement of the case.

All adjustments should be made without unnecessary or vexatious delays; no merely technical or frivolous objections should be made; but honest claims, fairly established, should in all cases be as fairly met and liberally construed; and the insured should receive the full indemnity contemplated by the contract. No responsible company, having any care for its good name in the community, would sanction any short-coming of its adjusters in these particulars. Any other course would be impolitic, unjust and highly reprehensible, and only tend to add to the prejudices already engendered in the minds of quite a portion of the community against insurance companies, in consequence of the dishonest practices of many unprincipled adjusters in the settlement of claims for weak or reckless institutions.

The Adjuster.

If adjusting be an ART, then is the thoroughly competent adjuster an ARTIST of no mean order of talent; for there are few callings or professions requiring so many *essential* qualifications to enable him to cope successfully with the multitudinous phases usually presented by complicated losses, whether such complications arise from conflicting and non-concurrent policies, or from the villainies of shrewd operators bent upon fleecing insurance companies.

He should be endowed with a fair share of energy, industry and acute perceptions; with discrimination, experience, sound judgment and decision of character. He should be a prompt and ready thinker; an accurate accountant, and possess a general knowledge of business as well as of law and mechanics; and above all, he should be *patient* and *persevering* in a high degree; for the correct adjustment of complicated losses is no child's play.

In fine, while he should be a combination of *merchant, mechanic, underwriter, lawyer* and DETECTIVE, he should be sufficiently discreet at all times to avoid giving offence by his manner: he should possess the rare faculty of saying unpleasant things, when necessary to be said, in a way calculated to avoid unnecessary irritation. The exhibition of anger and harshness on such occasions tends only to the injury of his case; while the soft word turneth away wrath; and an unreasonable man not unfrequently yields to words fitly spoken, when he would resist, or submit grudgingly, if he must, to harsh and intemperate language.

Our most prominent adjusters possess this gift; and to its proper exercise is due much of their uniform success in the profession. Memory recalls two of this class, who enjoyed this faculty in an eminent degree. One of them died a few years since, much regretted among an extended circle of friends; the other, by his urbanity and discretion in the

discharge of his duties as an adjuster, not only saved money but retained the confidence of the insured with whom he dealt and their influence also for his company. He has recently been deservedly made president of the company, whose interest he so faithfully served for so many years in a more humble, but not less useful capacity.

In view of the many qualifications essential to the forming of a complete adjuster, it may not be inappropriately said of adjusters as of poets, "They are born, not made." And while every local agent may not *hope* to rank among "number one" adjusters, all men possessing ordinary business capacity may *aspire* to success more or less complete, according as their energy, perseverance and determination to win distinction shall be brought into active operation; for it is not a gift nor an art alone that gives success, except when aided by severe training and lengthened experience. The field is open, the harvest is ripe, and skilled adjusters are constantly in demand.

Fire Insurance

Is a contract of *indemnity*, based upon certain results deduced from extended observation and careful analysis, whereby, for an agreed pecuniary consideration, and the observance of certain conditions therein expressed, the insurer undertakes to hold the insured harmless, to a certain extent, for a specified period of time, under certain contingencies, against loss or damage by fire upon certain specified subjects; which proposed *indemnity*, however, it is not contemplated shall restore the insured to as good condition as before the fire; but shall simply pay for as much of the property covered by the contract as may be lost or damaged; or so much thereof as may be agreed upon by the terms of the contract, at its actual cash value at the time of the loss.

It is a *personal* contract, and not an insurance of the specified subjects named in the policy. Lord Chancellor HARDWICKE, speaking upon this point observes, "To whom or for what loss are they (*The Hand-in-Hand Fire Office*) to make satisfaction? Why, to the *person* insured, and for the loss *he* may have sustained; for it cannot properly be called insuring the thing, for there is no possibility of doing it, and therefore must mean insuring the *person* from damage."

It is a contract which, though executed by only one of the parties to it, yet by its acceptance and the payment of the premium by the other party, becomes, with all its terms and conditions, equally binding upon both from and after such acceptance, and will control the adjustment in case of loss. The mere execution of the policy by the insurer is not conclusive, however, so long as it remains in his custody; there must be a delivery and payment of the consideration to make it binding.

The fire insurance contract is held by the courts to be in the nature of a *bond of indemnity*, the object of which is not for gain to the insured, but simply to protect him from loss.

The hazards which an insurance contract may be made to cover are of endless variety, embracing every known subject in which an

insurable interest can be recognized; and as this contract has for its basis only the representations of the insured, it is not to be wondered at that it should be sometimes made use of by designing men for perpetrating heavy frauds under the guise of insurance.

Mr. HINE, in his Book of Instruction, truly says: "In no contract is one party more completely at the mercy of another than the underwriter in insurance. He is necessarily ignorant of facts and circumstances that may be vital to the risk, and hence open to the fraud of designing men, who may withhold or misrepresent '*material*' facts."

It is to guard against, and, as much as possible, circumvent these attempts at fraud that so many safeguards in the shape of "*conditions of insurance*" are thrown about the contract by insurance companies; and in nothing connected with his calling does a skillful adjuster take more delight than in tracking one of these fraudulent cases through all of its devious windings, until the whole is brought to light—his company relieved from liability, and the detected culprit properly cared for by the civil authorities. This last contingency, though a consummation devoutly to be desired, is but too frequently unrealized.

The contract of insurance, when reduced to writing in accordance with certain printed forms in use by underwriters, becomes what is known and universally recognized as the *Policy of Insurance;* under which heading it will be further considered in its bearing upon the adjustment of losses.

The Premium

Is the pecuniary consideration paid by the insured for the policy. It is in all policies made a condition precedent to the insurance taking effect, that the premium shall first be paid to the company or its duly authorized agent; and such condition is held by the courts as valid.

No contract subsists while the premium remains unpaid, although the policy may have been made out, but *has not been delivered.*

A policy issued *and delivered* to the insured, in which the premium is acknowledged to have been received, will bind the company, though

the premium be not paid until after the loss. Nor can the insurer allege that the policy was void because the acknowledgment was untrue, unless such policy was obtained by fraud, error or duress.

When the condition requiring the prepayment of the premium has been in any manner waived by the insurer or his agent, parol evidence may be admitted to show the fact of such waiver.

Who may be considered "a duly authorized agent" of the company in this connection, is a very important consideration, and is a question upon which the decisions of the courts have not been uniformly harmonious.

Any agent having authority to solicit insurance and issue policies therefor, is duly authorized to receive the premium; payment to him is payment to his company.

When insurance has been obtained by a broker for a third party, and the policy has been delivered to such broker without payment of the premium upon delivery, and the broker collects the premium from the insured, but fails to pay it over to the company, the question as to whether such broker was the agent of the company or of the insured has been much mooted. Former decisions have usually held that the delivery of the policy to the broker without payment of the premium, being a voluntary act of the insurer, so far constituted such broker the agent for the collection of the premium, as to debar the company from any recourse upon the insured after he may have paid the premium to the broker upon the receipt of the policy from him. More recent decisions, however, based upon broader and more extended views of the peculiar customs and usage among underwriters in their transactions with insurance brokers, have almost uniformly been in favor of the insurer; and all such payments made to the broker by the insured are held not to be payments made to the company, and are made at the risk of the insured.

Several heavy and important cases of this class are now at issue in the courts, final decisions upon which are anxiously looked for as settling the facts in question.

Insurable Interests

May be designated as being any legal or equitable estate or right, absolute or contingent, which may be prejudicially affected, or any responsibility which may be brought into operation by a fire. Such interest must be in existence at the time of loss upon the subject covered, as well as at the time of insuring.

As it is the *individual* who is insured, and not the *property*, such individual must possess an *insurable interest* in such property as a basis of the contract; anything short of this would be a *wager* or *gaming* policy, and void in law.

The specific interest to be covered, whether as owner, factor, trustee, consignee, agent, mortgagee, lessee, or otherwise, should be distinctly set forth in the policy; and if not *truly* stated, would vitiate the contract.

Insurable Interests, where less than the whole, often cause much trouble in adjustments; as there may be several interests represented in one piece of property, any one or all of which may be separately insured by several different parties, in as many different companies, without the fact being known among the insurers until a loss occurs to bring it out. Such property should not be insured if known; but if insured, and a claim arises for loss, it should be most thoroughly investigated to ascertain the *values* of the several interests insured. Cases of this kind frequently occur, which puzzle the best adjusting talent to unravel them.

The Application

Is a *verbal* or *written* statement, made by the insured to the insurer before the subscription of the policy; and imports to be a true plan and faithful description of the present existing condition, value, ownership and occupancy of the premises to be covered, or containing the subject proposed to be covered by the policy, by which the insurer is enabled to judge accurately of the nature and value of the risk offered; and, as such *representation*, is made the basis of the contract.

Verbal applications are sometimes taken in lieu of written ones, in the larger cities and towns, where there seems to be a prejudice among persons against signing an application. Such verbal *representations* cannot be made *warranties*, and should be taken with great caution, as in cases of lawsuit, the most satisfactory proof will be necessary to make them of any avail in voiding the contract, even if admitted as evidence at all; and even when proven there must be *misrepresentations* or *concealment* of facts material to the risk, or the construction of the courts will be adverse to the underwriter. (*See Verbal Contracts.*)

The *application* is important for the identification of the property, as showing what was intended to be covered by the policy: as evidence of the good faith of the applicant in communicating all material facts, and thus enabling the underwriter to estimate the risk and adjust an adequate rate of premium; and as containing representations and warranties which must be substantially or literally complied with by the insured. (*See Agents.*)

Having such an important bearing upon the facts so essential to be known in the adjustment of a loss, the application should always be considered, in connection with the policy, in determining the liability of the insurer as well as the responsibility and honesty of the insured.

The courts have ever been inclined to view *applications* very leniently; usually declining to extend the effect of any statement, written or verbal, even when made a warranty, to the prejudice of the insured, where no fraud or misrepresentation is apparent.

The *Application*, as regarded by the courts, may be classed as *Representations* and *Warranties.*

Representations.

To constitute a *representation*, there must be an affirmation or denial of some fact, or an allegation which plainly leads the mind to an inference of a fact. They form no part of the contract; they must be substantially complied with, however, and to this extent are conditions precedent; but an exact and literal compliance is not necessary to recover as in case of warranty. They admit of variations and modifications, and do not invalidate the policy unless *materially* wrong and the risk is greater than represented, or fraud is evident. If *false*, however, in *material* facts, whether through ignorance or design, the policy is void.

Promissory representations imply that there is something which the insured is to do or perform during the life of the policy. Thus promissory representations that certain material additions or changes and improvements shall be made, if precise and definite, are binding upon the insured. Proof of compliance with such promissory representations lies with the insured.

In cases of ambiguity or doubt, the courts hold so much of the application as is not specifically declared to be a *warranty* to be *representation* only.

The facts as to the materiality of representations are questions for the jury.

Warranty

Differs from *representation* in that the former must be strictly and literally complied with; while with the latter, if complied with equitably and substantially, it will suffice.

Warranty always forms a part of the policy, and is a stipulation upon the *literal truth* of which the entire contract depends; hence a *literal* compliance with the terms of the warranty, and not merely a *substantial* one, can be exacted. It cannot be deviated from in the smallest partic-

ular, whether material or immaterial to the risk, without voiding the policy. The intentions of the parties in a warranty, except as to the meaning of the words used, cannot be inquired into.

An *application* becomes a *warranty* only when written or dictated and signed by the applicant, or his duly authorized agent for him: and must be referred to in the policy, and there made a warranty and part thereof.

A mere reference to an application in the policy does not make it a warranty.

Materiality.

Representations are said to be *material* to the risk, when they communicate any facts or circumstances, the belief in which may be reasonably supposed to influence the judgment of the underwriter in undertaking the risk and calculating the premium thereupon.

The *test* of *materiality* is in the enhancement of the premium had the true facts in the case been given; thus, when the nature of the interest or subject insured, if known, might influence the underwriter to decline the risk, or write upon it only at an advanced rate of premium, it is deemed *material* to the risk; and whatever may be the form of expression used by the insured, if it have the effect of imposing upon or misleading the insurer, it will be *material;* and, upon due proof, void the policy.

The evidence of skilled parties, or experts in the peculiar branch of business at issue, will be necessary for the proof; though the facts are for the jury.

Valuations and *insurable interest*, also *title*, are *material* to the hazard, and must be correctly stated.

Misrepresentation

Under the laws of insurance is when it is *false*, whether intentionally so or not, and tends to obtain for the applicant some advantage in the bargain. To void the policy it must not only be false, but it must be

material either as to rate of premium or as offering a false inducement to assume the risk at all.

In cases of misrepresentation as to *values*, if such misrepresentation cannot be accounted for by difference of opinions among experts, the policy is voided.

Any misrepresentation of *material* facts, such as *title* or *interest*, voids the policy.

Concealment

Is the suppression of *material* facts, unknown to the underwriter, which have reference to the pending bargain: and if such *material* circumstances be known to the applicant at the time of the insurance, and are suppressed by him, through ignorance or design, the policy will be voided.

Inadvertent omission of facts, *material* to the risk, and such as the insured should have known to be so, renders the policy void.

If the insured is induced to insure by an attempt to burn an adjacent house, the destruction of which would have destroyed his own, and conceals the fact from the insurer, he cannot recover.

The concealment of the fact of a fire having previously occurred upon the premises of the applicant, even through inadvertence and without fraud, vitiates the policy.

The Policy

Is the insurance contract reduced to writing, by means of certain forms, partly written and partly printed, in general use by underwriters for this purpose. These forms vary much, each company having its own peculiar wording, much to the annoyance of the adjuster where several policies with different conditions are interested in the loss. The form recommended by the National Board of Fire Underwriters was intended to remedy this evil by introducing uniformity, and thus facilitate adjustments under their conditions.

The policy will be considered in this connection only so far as it may bear upon the adjustment of losses; for any information beyond this, reference can be made to Mr. HINE's very complete *Form Book of Policies*, embracing suggestive forms for almost every contingency that may arise for an insurance contract. And as the policy, with its written and printed conditions, controls the adjustment in all cases, agents cannot be too familiar with their requirements.

All fire policies, without regard to the subject written upon, may be classified as either 1. *Specific:* 2. *General:* 3. *Floating:* 4. *Valued:* or 5. *Open:* and these again may be 6. *Concurrent*, or 7. *Non-Concurrent*, in their terms.

They may be further *defined* as follows, viz.:—

1st. *Specific:* Covering certain specific amounts, upon certain specific subjects, in specified localities, for specified parties.

2d. *General:* Covering under one amount, upon several subjects, or classes of articles combined, in one specified locality, for specified parties. This form is also called "*Blanket.*"

3d. *Floating:* Covering in one amount, on one or more kinds or classes of articles, in two or more localities, or within certain specified limits, for specified parties. This is sometimes called a "floater," and sometimes a "compound" policy.

4th. *Valued:* Covering the insured subject in a specific value, agreed upon and definitely settled to be paid in case of loss, and so inserted in the policy; which may be otherwise, either specific or general in its form.

Proof of value, in case of loss, is precluded in this form of policy, except in fraudulent over-valuations.

5th. *Open Fire:* Covering by separate entries, made from time to time, on one or more kinds or classes of subjects, for such terms, amounts and rates, and in such localities as may be designated at the time of the entry; each entry being, in fact, a new specific policy: not valid until duly countersigned by the proper authority.

6th. *Concurrent:* Covering the same subjects, in the same proportions, in the same or different amounts, in the same localities and for the same parties; either by the specific, general, floating, or other form of policy.

7th. *Non-Concurrent:* Covering subjects for the same owner, in the same location, without reference to the proportions, amounts or terms of other policies upon the same subjects; either by the specific, general or floating form of policy; either singly or combined.

This form is sometimes designated as "*Mixed.*" Adjusters not unfrequently find them very much mixed.

The *average* or *pro rata clause*, is usually appended to *general* and *floating* policies for the protection of the insurer against excessive loss; and imports that *all* of the subjects covered by such general or floating policy shall contribute *pro rata* to the payment of a loss on any portion of such subjects. The omission of this clause, in any policy where it can be used, throws so great an advantage on the side of the insured in the adjustment of claims, that such omission can be viewed in no other light than as equivalent to a very great reduction of the rate of premium. When the property is covered to its full value, the average clause is not necessary.

Co-insurance is a stipulation whereby it is understood and agreed that all claims under the policy shall be only for such portion of the whole loss as the amount of insurance may bear to the value of the whole of the property insured.

Adjustment under the *specific* form of policies becomes a simple matter of value of the property covered and the amount of loss.

Adjustment under the *general* or blanket, and the *floating* forms, when confined to single policies, are like the specific, mere questions of value; but when combined with the *specific* form upon the same subjects, the adjustment becomes more or less complex and difficult as the *contribution* may be more or less involved. Full explanations of this subject are given under the head of *Apportionment of Loss* or *Contribution.*

Under the *general* or *blanket* form of policy, the insurer is liable to be called upon to pay the full amount of the insurance upon a partial loss only of the property covered. This contingency can be obviated by the insertion of the *average clause* in the policy.

The *Open Fire Policy*, being a series of *specific* entries, losses are easily adjusted under it.

The *Valued Policy* is one which not only estimates the value of the property covered by the insurance, but also values the loss; it is equivalent to an assessment of damages in anticipation of a loss; and is so specifically *specific*, as almost to be said to adjust itself. The value, being definitely fixed by the terms of the policy, cannot be questioned, except, as already intimated, in the case of fraudulent over-valuations of the subjects or interest insured; and to be valid as a defence, such over-valuation must be unquestionably apparent. The onus of proving the value is upon the insured, when made a question.

This form of policy is seldom used in fire insurance, but enters largely into the marine branch of underwriting.

Conditions.

The printed *conditions* attached to the insurance contract result from the peculiar nature of that contract: and are simply stipulations for the protection of the underwriter against fraud, which the insured agrees, by his acceptance of the policy, to observe during its currency.

They fulfil a double office in determining the rights and liabilities of the underwriter, as well as indicating the duty and responsibility of the insured under the contract.

They are an integral and controlling part of the contract, whether referred to in the written portions or other part of the policy or not. They cannot be waived or changed without the written consent of the insurer, endorsed upon the policy itself.

When these conditions impose restrictive burdens upon the insured, they will be construed by the courts strictly against those for whose benefit they are reserved.

These conditions have heretofore differed widely in the policies of various companies, causing much difficulty in adjusting losses under their various and not unfrequently conflicting requirements. It is to be hoped that more uniformity will be attained by the general acceptance, by underwriters, of the new form of policy recommended by the National Board.

Endorsements

Purport to be the written consent of the underwriter to any change of the original contract, by transfer or assignment of the contract itself, or of the subject therein insured, to other parties; or by reason of removal of the property, or of any change or alteration in the premises, or other cause material to the risk.

To be valid, these endorsements must always be written upon the policy, and signed by the proper authority.

No endorsement should be made upon any policy *after a fire* and before the settlement of the loss.

Assignments.

The contract of insurance being a *personal* one, and the underwriter having the right of personal selection, may be willing to insure one person and not another; consequently the consent of the insurer is absolutely essential to the validity of any transfer or assignment of the contract of insurance itself, or of any of the subjects covered thereby.

The conditions of all policies require that all assignments of the contract, or subjects covered thereby, must be assented to by the underwriter thereupon.

The policy of insurance does not attach to realty, or go with the same as incident thereto, in consequence of any sale or conveyance of the property.

A general assignment by the insured of all of his personal estate, for the benefit of his creditors, without the consent of the insurer, does not void his policy, as he still holds an insurable interest in the estate.

When loss is merely made payable to a third party, he is entitled to recover *only* the interest of the insured therein, whatever that may prove to be.

The simple endorsement of "For value received, pay the within, in case of loss, to A. B.," even when assented to by the insurer, is not an assignment of the contract to the said A. B.

The endorsement of "Payable, in case of loss, to C. D.," when consented to by the insurer, is equivalent to an assignment of the contract as collateral security; and C. D. can collect, in case of loss, to the amount of the interest of the insured at the time of such loss.

No assignment of a policy should be assented to under any circumstances *after a fire.* In case of loss the interest of the insured in such loss is assignable without the consent of the company, being a debt against the insurer, the amount of which is contingent upon the results of the adjustment.

Construction of the Policy.

The principles of legal construction are, that if the clauses of the policy be clear and unambiguous, the courts will not admit extraneous evidence to contradict, to vary or to explain them. If, on the contrary, they are obscure and ambiguous, the courts may resort to any means of explaining them which may be supplied by either the rules of common law, the general usages of trade, or the particular circumstances of the case.

There is a distinction in the construction in cases where the preparation of an instrument belongs to the party to become liable under it; such party, it is held, ought to be more strictly dealt with. Insurance contracts come within this principle; and it is held that where there is an expression in a policy capable of two equally reasonable interpretations, that one must be adopted which is most favorable to the insured, for the language of the policy is that of the insurers, and if they have left their design doubtful by using obscure language, the construction will be unfavorable to them.

When the printed portions of the policy are ambiguous concerning the circumstances, the written words are held to control, as being the immediate language and terms selected by the parties themselves for the expression of their meaning; hence greater strictness of construction is applied to such clauses than to the printed formula, which are more general in their application, being adapted to all other cases of insurance covering upon similar subjects.

The terms used in the insurance contract are for the most part those in ordinary acceptation among business men, and should be construed in the sense which the known usage of trade, or practice among underwriters, has given them.

When the terms of the policy are all clearly defined, they are held to contain the true intent and meaning of the parties, and will be so construed. The leaning of the courts is towards a liberal construction of contracts of insurance under any circumstances; and as was said of conditions, they will be construed strictly against those for whose benefit the reservations in the policy are made. To make the case as strong as possible in favor of the insurer, the National Board of Underwriters has inserted the following among the conditions of the new form of policy, viz.:

"The use of general terms, or anything less than a distinct, specific agreement, clearly expressed, and endorsed on this policy, shall not be construed as a waiver of any printed or written condition or restriction therein."

Insurance upon a "house" is held to embrace everything appurtenant and necessary to the main building.

Furniture and movables are *chattels*, and not fixtures, and are not covered by a policy on "fixtures."

A policy upon a building in course of erection does not include any materials not actually built into the house.

Insurance covering a "*steam saw-mill;*" held to include not only the building, but all machinery necessary to make it a steam saw-mill.

Insurance on a "*starch manufactory*" will include all fixtures and machinery necessary to the process of starch making.

Usage

Must be conformable to law and applicable to fire insurance. It may be admissible to explain what is doubtful; it is never admissible to contradict what is plain and free from ambiguity; otherwise parties may be arbitrarily held to mean differently from what they have written: nor can usage be effectual to render void an express contract for a valuable consideration. In ambiguous portions of the insurance contract, *usage* is sometimes permitted to control as to the intent of the parties; not unfrequently modifying the wording of the policy; but to be binding upon the underwriter, such *usage* must be definite, general, uniform and well established; and full proof of such *usage* is an indispensable requisite to its admission.

Insurers are presumed to know the usage of trade; and when a term is used having a limited meaning in the trade, and in a policy issued to one in that trade, or in one closely connected with it, both parties must be assumed to have understood the term in the sense in which it is used in such trade. Evidence to prove such usage is always admissible.

Proof of *usage* among commission merchants, in the matter of insuring goods consigned to them, is held to be admissible.

Local custom or *usage* among underwriters, not communicated to the insured, nor of such notoriety as to afford any presumption of knowledge on his part, is not admissible.

The true test of *usage* is its having existed a sufficient length of time to have become generally known.

No *usage* of a company, not even an express agreement of the parties made previous to, or at the time of the execution of the policy, can be admitted to explain, modify or control the written contract; both parties must stand or fall by the policy as written.

Alterations.

When alterations and additions are expressly forbidden by the conditions of the policy, even a casual infringement will not be permitted; and no question of *materiality* can arise.

When no stipulations against such alterations exist in the policy, a *material* increase of the hazard must be shown to void the contract. The fact of such increase of hazard is a question for the jury to decide; but the onus of proving such *materiality* in the alterations lies with the insurer.

Where a policy provided that in case the buildings covered should be used to carry on any trade which would, in any way, increase the risk beyond that described in the application and survey, unless consent for such change was endorsed on the policy, then the policy should be void; it was held that the standard by which the risk of any other trade carried on in such buildings was to be estimated, was that described in the original application, and not the actual prior use of the property as known to the insurers.

Additional Insurance.

The privilege of *unlimited other insurance*, originating in the rapacity of less careful companies for business upon any terms, has not only proved injurious to underwriters generally, but has seriously demoralized certain portions of the business community, by offering irresistible opportunities for fraud, and consequent arson.

So prolific a source of loss has *over-insurance* become, that the very first inquiry of the adjuster, on reaching the scene of disaster is, or should be, "What is the amount of insurance?" The next, and only further step in this direction, is to ascertain that *all* of the *additional* insurance, if any, has been properly assented to by the companies, by the usual endorsement.

Though there are many conflicting decisions by the courts upon this subject, usually turning however upon some collateral point, the generally recognized principles, applicable to *additional insurance*, are embraced in the following points, viz.:

The privilege of "other insurance without notice till required," admits of any amount of additional insurance, without question.

The privilege of "other insurance, to the amount of one thousand dollars," limits the further insurance to the sum named. Any insurance beyond the thousand dollars specified, without further specific consent of the first insurer, voids the policy, even though the additional insurance was for a short time only, and expired before the loss. Additional insurance, prior or subsequent, without consent of the company, voids the policy. Additional insurance, without notice and consent, does not void a policy in which such notice and consent are not made conditions precedent.

If a first policy be voided by additional insurance without notice, the additional policy is held valid, however, if notice of prior insurance was required and given; and *vice versa.* In case of loss under these circumstances, these policies would be held valid, *as against the insured,* in apportioning the contribution among the insurers; as such prior insurance may have been a *material* consideration in accepting the risk by the makers of the valid policy.

Double Insurance takes place when the insured makes two or more insurances covering the same subject, risk and interest; in which case the policies are considered as one and the same, the insurer being liable *pro rata;* and entitled to contribution to equalize payments made on account of losses: provided such double insurance was not prohibited by the conditions of the policy requiring previous notice and consent.

When a policy in one company covers a building only, and a subsequent policy of another company covers the building, machinery, tools, belting and stock, for the same owner, it is held not to be a *double* insurance within the meaning of a clause in the first policy prohibiting double insurance without notice to insurer.

A company receiving notice of additional insurance, and failing to void the policy in consequence, cannot resist a recovery, in case of loss, on that ground. Such waiver of rights in the matter of additional insurance, however, will not debar the insurer from the benefit of a *pro rata* contribution with the additional policies, in case of loss.

Re-Insurance

Is a valid contract, whereby one company agrees to assume a certain portion of the liability of another company, upon certain subjects covered by the policy of the latter company; conditioned further, that in case of loss, the re-insuring company shall contribute, *pro rata*, with the re-insured in the payment thereof. Without this *pro rata* clause the re-insuring policy must be first exhausted before the re-insured policy can be called on to contribute. The form now used is as follows, viz.:

"Re-insurance, in case of loss, to be settled in proportion as the sum re-insured shall bear to the whole sum covered by the re-insured company."

In the adjustment of losses, under re-insurance policies, the principal points involved are embraced in the following decisions, viz.:

The subject-matter of insurance is the same in the policy of re-insurance as in the original insurance, though the interest was different. In such contract, the condition of policy requiring preliminary proofs, &c., is complied with by the first underwriter transmitting to the re-insurer the proofs made by the original insured.

The original insured has no interest in the policy of re-insurance, even though the re-insured company should become bankrupt during the life of the original policy.

The re-insurer is liable for the costs and expenses incurred in a suit between the original insured and the company re-insured, if the re-insurer withold payment until the termination of such suit.

The re-insured can collect of re-insurer before payment to the original insured; and, though the company re-insured become insolvent, the re-insurer is not released from payment in full by reason thereof; but must pay the same, in case of loss, to the receivers of the re-insured company, and not to the original insured.

Re-insurers may make every defence which the re-insured could then make, when loss remains unadjusted between the re-insured and the party originally insured, on the terms of the policy; and where the re-insured is not liable on the original policy, a recovery cannot be had against the re-insurer.

Where an agent of one company was, unknown to that company, also the secretary of another company, and re-insured the company of which he was the secretary in the company of which he was the agent, it was held that such policy of re-insurance was made under circumstances which would enable the company of which he was agent to avoid it, upon the principles of equity; and as it was sought to be enforced in a court where these principles were among the grounds of decision, the contract must be held invalid.

Parol Agreements.

From the want of proper knowledge of the force and bearing of the conditions of the policy, *parol agreements* between agents and the insured have been the source of great trouble to adjusters; and many lawsuits have resulted from them, much to the detriment of the underwriter.

The principles governing *parol agreements* may be stated as follows: and the distinction between an agreement before and after the issuing of the policy should be carefully noted, viz.:

If made by an agent, it must be within his authority, in order to bind his principal.

An *offer* to insure does not constitute or create a contract, and may be withdrawn at any time before acceptance.

An agreement to insure is binding upon the company; but an acceptance of the offer *as made*, without any change, must be signified, with a tender of the premium within a reasonable time, if such time be not limited by the agreement, or the agreement will be considered as void.

Such an agreement is in fact a contract that a policy of insurance shall be made according to the form in ordinary use by the agent's company, unless otherwise specified in the agreement.

A court of equity may compel the delivery of a policy agreed and contracted for, either before or after a loss. And the same court may enforce payment of loss under such contract before the delivery of the policy.

When the policy has been accepted, any subsequent *parol agreement* by the agent, to change or alter any of the conditions of the contract, is *null* and *void* until endorsed upon the policy and duly signed by him, in accordance with the printed conditions thereof; which conditions must control all agreements, verbal or written, connected with the policy subsequent to its acceptance by the insured.

Thus, the removal of certain insured property to a new location, without the consent of the insurer, or his agent, having been first endorsed upon the policy, which made the endorsement of such consent to any change a condition precedent among its covenants, will avoid the policy from and after such removal; nor will *parol* evidence be admissible to show a parol agreement by the agent that such property should remain covered by the policy at the new location.

Verbal agreements to insure upon certain terms and conditions, prior to the issue and acceptance of the policy, are held to be waived unless inserted in the contract.

Parol Evidence

Is not admissible to vary or explain the terms of a policy or an application, where the latter has been made a warranty, and there is no ambiguity in either.

Nor is it admissible to vary the terms of a written contract; or to show what risks were intended to be covered and protected by the policy. Nor is parol evidence competent to show a *verbal* agreement to make any change in the conditions of a policy, as no such agreement could be binding unless assented to by the insurer in the manner indicated in such conditions.

Parol evidence is admissible to show the extent of the interest intended to be covered by the policy, if it does not contradict the terms of the policy itself.

Origin of Fires.

Underwriting experience has demonstrated that fires from *natural causes* are small in number as compared with those arising from *fraud*; yet, doubtless many of the fires attributed to incendiaries and to "causes unknown," are the results of unsuspected, hence undetected, natural causes.

In seeking for the "cause unknown" of fires, many circumstances should have due consideration.

First: As to the insured, and his possible agency in the fire. His moral character, standing and business circumstances should be weighed; his antecedents should be inquired into: Has he been burned out before? Was he insured? Did he recover the insurance? Any suspicious circumstances attending such fire? Did he lose anything above the insurance? Is he now involved, or overloaded with unsalable stock on a falling market? Is he owner of the property, or is it leased—in litigation or unproductive? Has he made any attempts to sell? *Is he over-insured?* In fine, do circumstances indicate, in any way, that it would be an object for him to sell to the underwriters?

Second: Attendant circumstances: Do they indicate anything suspicious; is incendiarism apparent; are there grounds for any suspicion against personal enemies? Any cause for spontaneous combustion about the premises? Had the premises been regarded as a nuisance, from any cause, by the neighborhood? Are there indications of carelessness or design on the part of any one?

Diligent and patient research is not unfrequently rewarded by the discovery of the "unknown cause," which if it does not tend to release the company from liability, does satisfy the adjuster of the fairness or unfairness of the claim made for loss by the fire.

Fires may be said to originate from three *primary* causes, viz.: *accident*, *carelessness*, and *design*.

First. By *accident*, as arising from well-known natural causes, without the immediate, willful intervention of human aid: such as defects in chimneys and heating apparatus; friction of machinery running in wooden journals; explosions; spontaneous combustion; illuminations; pyrotechnic displays; sparks from locomotives; defective stove pipes, and numerous other elements or causes, which the inventive genius and multiplying resources of modern science are constantly increasing.

Many fires are doubtless caused by a violation of the plainest principles governing the use of such articles as coal oil, naphtha, benzine, gasoline, benzole, nitro-glycerine, and other similar combustible and explosive substances. The constant handling of, and familiarity with these dangerous materials, engender a feeling of false security and temerity and consequent carelessness, from the results of which the community is the sufferer.

Spontaneous combustion is one of the most subtle and secret enemies that the underwriter has to deal with. It is the cause of a large proportion of accidental fires; and not a few of those justly originating in incendiarism. It is well known that, under certain conditions, numerous articles of commerce are liable to generate heat enough to cause flame, either spontaneously or by contact with inflammable materials, and cause consequent destruction. The improper mingling of, or want of due care in the storing of certain kinds of goods, frequently causes spontaneous combustion.

Explosions are another fruitful source of fires. Various trades and occupations are more or less liable to have explosions occur in the ordinary prosecution of their business; such as brass and iron foundries; soap and candle factories; where steam boilers are used, and where inflammable gases are generated. Such dangers usually arise suddenly and unexpectedly, and cannot be foreseen or warded off by ordinary precautions.

An extended list of inflammable, combustible and explosive materials, and their name is legion, with the various combinations in which they have been known to ignite and explode spontaneously, would be an interesting and instructive study to the insurance agent; and if properly digested by him, would save insurance companies large sums of money in the course of the year upon risks refused in consequence of their liability to loss from these causes.

Second: By *carelessness*, either intentional or reckless; or by simple remissness or gross negligence, as in the use of matches; filling lamps with inflammable oils by artificial light; putting hot ashes into wooden receptacles, or from fire-works. The great fire at Portland, in 1866, arose from a single Chinese fire-cracker, carelessly thrown into a boat-builder's establishment on the fourth of July; amount lost, $10,000,000; an expensive exhibition of pyrotechnics, by the way. Also from the careless use of lights in drug and other stores, when drawing alcohol, coal oil and similar substances, after dark, or in cellars away from daylight; a very reprehensible practice, and one usually provided for in the conditions of the policy.

Losses by simple carelessness will thus be seen to be only less fatal than those by incendiarism.

Recklessness and gross negligence are apt to prevail in exact proportion to the demoralization of business; fires being much more frequent and extensive during dull seasons, and in times of financial pressure, than when the mercantile community moves swimmingly on. Dull times and a falling market are great promoters of fires.

There is no remedy at present under the law for carelessness; but gross negligence on the part of a party to whom money was payable in case of loss, is presumptive of fraud; and if established by strong proof, would prevent recovery.

Third. By *Design:* As from *incendiarism*, with a view of robbery of the premises during the confusion consequent upon the fire:

Or, to cover up *defalcations* and previous *robbery:* as in warehouses, elevators, and cotton risks:

Or, through *hatred* and *revenge* against owner or occupant of the premises:

Or, through *fraud:* for the purpose of realizing upon a falling market; or induced thereto by heavy *over-insurance*, obtained through the reckless competition of irresponsible companies.

The great facilities offered by the well-known properties of certain combustible and inflammable materials, easily to be obtained without creating suspicion, render incendiarism and arson of easy accomplishment when once resolved upon. It has been most tritely remarked, that

"Of all the crimes known to the law, *incendiarism* most effectually baffles justice; and of all fraudulent agencies brought to bear upon insurance companies, it is the least liable to detection, and the most seldom punished."

While recent improvements in science have done much to facilitate and increase the crime of arson, it has been further greatly encouraged and stimulated by the temptation held out by hasty and illy-considered adjustments, and the payment of claims without due investigation.

To such an extent have arson and incendiarism been carried on, with especial reference to defrauding insurance companies, that the National Board of Fire Underwriters, at its session in 1868, passed the following resolution relative to it, viz.:

"*Resolved:* That it shall be the duty of every local board, in cases of fires in their respective localities, involving loss to the companies belonging to this Board, to induce the civil authorities to investigate the cause of such fires, if it be practicable; and if it be not practicable to secure such an investigation on the part of the local civil authorities, then, in such case, it shall be obligatory upon said local boards to make a due investigation of the same; and, in all cases of incendiarism, said boards shall report the facts to the Chairman of the Executive Committee."

If these suggestions of the National Board are energetically carried out by the various local boards throughout the country, incendiary fires, for the purpose of defrauding insurance companies, will rapidly decrease in numbers; for delays, investigations, lawsuits and exposures, are not favorable to their growth.

The decisions of the courts upon the subject of *arson*, as connected with fire insurance, are somewhat conflicting as to the strength of the evidence needful to bar recovery, when the defence set up is that the insured set fire to the premises.

In all insurance suits, being only civil actions, the rule of evidence is the same as in ordinary cases—the jury may find the issue upon the weight or preponderance of the evidence. *Fraudulent intent* must be shown, however; which may be done by direct or presumptive evidence, and need not, necessarily, be such as would convict on prosecution for arson.

The Agent.

The following are the rulings of the courts as to the powers and duties of an agent, viz.:

By common law, any person or persons having power to do a thing in his or their own right, may do it by an agent.

A company cannot be affected by any act of an agent not within the scope of his authority.

A company cannot be discharged by *private* instructions to agents, the insured being ignorant of such instructions at the time of making the contract.

When an agent has no written appointment, the jury must decide as to the extent of his authority, from what he testifies and did, coupled with the acts of the company recognizing him.

No person can act as an agent in a transaction in which he has an adverse interest or employment.

An agent cannot receive an application from himself, and insure his own property under it so as to bind the company.

An agent cannot delegate his authority to another.

Policies which are valid only when countersigned by an agent duly authorized, must not be signed by another party for him.

An agent for two or more companies, takes a risk in one of them and re-insures it in a second for which he is also agent; held, that such re-insurance is not binding upon such second company until approved by the parent office.

Agents having no power to issue policies, cannot consent to transfer of policies, or make other valid endorsements.

Knowledge by agent of facts forfeiting a policy, is not binding upon his company, unless communicated to him by the insured. Rumor or street talk is not notice.

An application is held to be the act of the applicant, and where the conditions of the policy require that the applicant shall be bound by his application, he is affected by any omissions in it by the agent, even when the latter is agent of both parties.

But when an agent omits from an application facts stated by applicant, and which agent promised to insert, the insured must not suffer for the omission.

An applicant entrusting an application in blank to a *sub*-agent, no empowered to issue policies, with permission to fill up the same, is responsible for statements subsequently inserted by the sub-agent.

If either party must suffer by the mistake of an agent, it must be the party whose agent he is.

When agent surveys premises and inserts the value as given by applicant, such value binds the insured, but not the company.

An agent has no authority to issue a policy *after a loss occurs*, if known to him, though in receipt of an application for same, but not acted upon.

And if a verbal contract for the insurance had been previously distinctly made, the agent should nevertheless decline to issue the policy until the facts have been communicated to his company.

In a partnership agency, each partner has all the powers of the firm.

Duty of an Agent.

In cases of loss by fire, in the absence of a special adjuster, the local agent must identify himself heartily with his company, and act upon the defensive, so far as necessary, until he can hear from the parent office. He should fully comprehend that *he is the representative of his company* and *not of the insured;* "a man cannot serve two masters." He should also understand, that while it is *not* expected that he will seek to take undue advantage of any party, it *is* confidently expected that he will watch closely to prevent any party from taking improper advantage of his company, either by accident or design. And, as such representative, he should be especially careful, in doubtful cases, that he does not commit himself or his company to a recognition of any

claim, or to any definite line of policy as to its adjustment, without especial instructions from the parent office; for inasmuch as the laws are the only safeguard for the underwriter against unjust and fraudulent claims, so no legal point in favor of the company should be unadvisedly waived or surrendered, either by act or implication, until the proof submitted shall have been made entirely satisfactory in all of its details, or the claim may have been compromised. If the loss be a just one it cannot be injured by scrutiny. Undue haste, on the part of a claimant, is suggestive that something behind needs investigating: while feverish anxiety on the part of the agent to hurry up the closing of the claim, because other companies have paid, indicates want of experience and lack of judgment.

The necessary duties of an agent, in this connection, are indicated herein, in the order of their importance, viz.:

First Step.

Notice of Loss: Where a case of loss or damage under a policy of his company, whether large or small, comes to his knowledge, the local agent is required to notify the parent office immediately, by telegram when the amount is large, giving number of the policy, probable amount of loss, partial or total; with the gross amount of other insurance, if any; to be followed, with as little delay as possible, by letter giving particulars more fully; as to whether knowledge of such loss was obtained directly from the insured, or his agent, in accordance with the conditions of the policy, or from other sources; also the names of the companies interested in the loss, and amounts covered by each; together with such other information touching the loss or damage as may be known or suspected at the time. This is imperative! (See *Notice of loss by insured.*)

In cases involving large amounts, or likely to prove intricate in the settlement, a special adjuster is usually sent from the office; but smaller and simple cases may be left to the local agent, whose mind will be much enlightened as to his own duties and the reserved rights of his company, by an attentive study of the printed "*Conditions of insurance*," as given in the policy, and by correspondence with the parent office, when necessary.

Second Step.

Preservation of the Property: After notice of the loss has been promptly forwarded to the company, and until advised by the parent office, the local agent will look after the interest of his company. He will see that the owner, whose duty it is to do so, under the conditions of the policy, makes proper and timely efforts to preserve from further injury or deterioration the property saved, whether sound or in a damaged condition. If necessary, it should be removed to another building.

Should the owner refuse or delay, to the evident detriment of the property, to have it properly attended to, he will do so at his own peril. The agent will at once notify the parent office of the fact, by telegram in special cases, and await advices. Should delay, however, involve no immediate injury to the property, action by the local agent may be deferred until the arrival of an adjuster, or definite advices be received from the company.

Especial attention should be paid to shelf-hardware, cutlery, stove and tin ware, and similar stocks which rust quickly. *Wet goods*, millinery stocks and such like, should be opened and spread to dry, so as to prevent mildew, stain or mould, arising from heat.

Any perishable property, which would materially injure by delay, should be submitted to appraisers as soon as possible, and when appraised, turned over to the claimant, as every day's delay adds to the damage; or if delay would render it likely to be totally destroyed, it should at once be sold at auction, or at private sale, by agreement with the claimant, for cash, "*for and on account of whom it may concern.*"

As the representatives of the insurers, agents have the right of access to, and a general supervisory interest over the property covered by their companies, which *should always be exercised when necessary* for its preservation against further damage or loss by theft.

Further instructions upon the duty of local agents, in regard to damaged goods, will be found under the head of "Appraisement of Damaged Goods."

Third Step.

Investigation of the Origin of the Fire: While attending to the proper preservation of the goods or other property, the local agent should make diligent inquiry as to the origin of, and circumstances attendant upon the fire; the more especially if originating upon the premises of the insured, so as to be prepared to communicate the results of his investigations either to the adjuster on his arrival, thus giving him a clue to work upon, or by letter to the company.

For further suggestions, which may assist in the investigation, the agent is referred to the chapter on the "Origin of Fires."

Fourth Step.

Examination of the risk, *at the time of the fire*, with reference to the terms of the contract: Agent should carefully read the written portions of the policy, and the representations as made in the survey and application, to discover if any changes *material* to the risk had been made since the policy was issued; either by changes in occupancy, by additions or alterations, or other causes affecting the insurance.

The conditions of the policy should be carefully scanned, for the purpose of detecting any *willful* violation by the insured.

Any information gained by this investigation of the policy and conditions should be carefully noted, ready for use at the proper time, should occasion require.

Having made all of these preliminary investigations, the agent is ready to proceed with the adjustment of the loss; and the more thoroughly the investigation has been thus far made, the more satisfactory and easy will the final adjustment be.

Liability

Of the insurer or of the insured, as connected with loss or damage under the insurance contract, is fully set forth in the policies of the several companies, with all of their clauses, conditions and stipulations.

For information upon such points as are not specifically treated herein, the agent is referred to the conditions of the policy of his company, with which he should become perfectly familiar in order to comprehend the status of his company in case of loss at his agency.

Theft.

The following are the rulings of the courts in the matter of *theft* at and after fires, viz.:

Insurers are liable for loss of goods stolen *during* the fire, *there being no exceptions in the policy against theft.*

The liability of insurers for loss by theft (*there being no exceptions of losses by theft in the policy*) is not restricted to the precise period when the fire was extinguished: the precise time when the theft occurs is not important, if it be occasioned directly by the fire.

Insurers are liable for loss by theft consequent upon the careful removal of insured goods by the insurance watch, from a burning building wherein they must have otherwise been burned, it being "a loss or damage by fire."

Where the policy made it the duty of the insured "to use his best endeavors for saving and preserving the property," it was held that goods lost or stolen in the course of removal (in accordance with the provisions of the policy), from a building actually on fire, was a loss within the terms of the policy.

It will be observed, in these last two decisions, that no mention is made of any *exceptions against losses by theft* being among the conditions of the policies.

Where a policy provided against liability for loss by theft, and also required the insured to "use all diligence in removal and preservation of the property," under penalty of voiding the policy, in case of failure so to do, it was held that the clause protecting the insurers against loss by theft, was independent of the one following, and the insured could not recover for loss by theft, although occasioned by the removal of the goods in compliance with such last clause.

Loss or Damage

Must be caused by fire; either by the actual ignition of the property itself, or of some substance near by causing damage by heat or by smoke, or from water used in extinguishing the flames. Fire, by actual ignition, must be the proximate or efficient cause of the loss or damage, and not merely incidental to it.

When caused by explosions of any kind, or by lightning, the underwriter is liable for loss or damage only when fire ensues; and under the conditions of the National Board form of policy, "such loss shall be determined by the value of the damaged property after the casualty by explosion or lightning." Here is ground for a very nice distinction. Under the conditions of some policies however, all liability ceases upon the premises in case of an explosion from any cause.

When caused by *removal of the goods* from a building not yet on fire, but seriously threatened thereby, to preserve them from total or partial loss, such removal must be absolutely necessary and the danger must be imminent. In this case, under the National Board form of policy, "the damage shall be borne by the insured and the company in proportion as the sum thereby insured bears to the value of the whole property insured."

If a building shall fall, except as the result of a fire, the policy becomes at once null and void, even though fire ensues from such fall.

The destruction of a building by the public authorities, when absolutely necessary to prevent the extension of a conflagration, becomes a loss by fire, and the underwriter is liable for the loss, if insured. This decision was made on the ground that a loss by the explosion of gunpowder is a loss by fire; hence the liability of the insurer does not seem to be affected by the legality or illegality of the act of the public authorities which may be made a question for the courts.

The underwriter is not liable for damage caused by the failure or willful neglect of the insured to take proper steps for the effective pro-

tection of his property at and after the fire and before the inventory and appraisement.

There being no *abandonment* of damaged property to the underwriter in fire insurance, it remains the property of the insured after, as before the fire, and is at his risk, to be taken care of at his expense. It may be disposed of by him as soon as it has been satisfactorily invoiced and properly appraised. The insurers, in self-defense, however, reserve the right to take any or all damaged or sound articles at their appraised values, if, in the opinion of the adjuster, they have been estimated below their actual worth.

Losses may be *total* or *partial.* They are considered *total* when reaching an amount up to or beyond the insurance. They are *partial* when anything less than the amount of the insurance.

Damage may be classified as *actual* and *constructive.*

Actual damage is that which arises directly from the fire and its immediate consequences, and must be determined without any reference to extraneous circumstances; the intrinsic value of the property at the time of the fire being the true criterion for estimating the loss or damage.

Insurance of a mortgagee is insurance to the amount of the debt only, and in case of loss the underwriter is liable only for the amount of that debt, within the terms and amount of the policy, as the interest of the insured may be made to appear at the time of the loss.

For goods in the hands of the manufacturer, the cost of production, exclusive of profit, is the measure of damage.

For manufactured goods in hands of dealers, the actual cash value of such property in the market, at the time of the fire, as affected by depreciation for changes of fashion, shop-worn stock, or other cause, is the test of damage.

Goods on commission are not covered unless specifically named, and. in case of loss under insurance, are to be estimated at market value.

Goods sold but not delivered, when covered by the policy, are to be estimated at market values at the time of the fire, no allowance being made for profit upon the sale.

Constructive or *Consequential* damage, such as loss of time, or of profits from derangement of business consequent upon the fire, are too indefinite and intangible in their natures to be made subjects of legiti-

mate insurance; any such would be in the nature of a *wager* policy, and void by law.

In *rent* or *lease* policies, when certain damages are specifically insured against, the *actual loss of rent*, and not the sum covered by the policy, is the measure of damage.

A *lessee* can only recover the actual value of the tenement for "occupation," subject to the rent.

In neither of the last two cases has the policy any reference to the value of the buildings, as such.

Abandonment.

The terms of the fire insurance contract contemplate indemnity to the insured, and nothing more, but does not contemplate, in event of damage, the purchase of the stock by the insurer at its value on the day of the fire. It is one thing to indemnify the insured for injury actually sustained, and quite another to be compelled to become the purchaser of a large amount of damaged merchandise. Hence there can be no abandonment under the conditions of the fire insurance contract. Nor, on the other hand, can the underwriter compel the insured to hand the property over to him, except in cases of evident under-valuation in the appraisement, when the insurer is at liberty to take all or any of the stock at its valuation by the appraisers.

Companies sometimes take the *damaged* goods, by agreement with the insured, and dispose of them at auction for cash, for and on account of whom it may concern, as being the most ready and equitable means of arriving at the present value of the same; but sound goods are never taken, as the insurer has no interest in them beyond their ascertained value in the adjustment.

Salvage

Is that proportion, either large or small, of the subject of insurance which may be saved from or remain after the fire, in a sound or damaged condition. It remains the property of the insured, and after appraisement and inventory, is estimated at its value as *sound* in diminution of the amount of loss.

In looking into a claim for loss or damage upon stocks of merchandise, it pays well to scrutinize the *remnants* and seek among the *ruins* for evidence corroborating, or impeaching the fairness of the claim. Many kinds of goods, especially those combining wood and iron in their manufacture, leave indubitable evidence of their presence before the fire; tubs and buckets, as well as liquor casks and kegs, have iron hoops, which will not burn; and the iron of implements with wooden handles, still remains unconsumed. Do they tally with the proofs?

The agent should also examine closely to ascertain what portion of the damage or loss, by theft or otherwise, occurred *after* the removal; or may have been caused by the removal.

In this way the amount of *salvage* may be materially enhanced to the benefit of the company and without injustice to the claimant.

Appraisement of Damaged Goods.

In case of loss on stocks of goods by fire, where the amount of damage claimed may render a formal appraisement necessary or desirable, the stock should be put in as good order and condition as possible by *the claimant;* or, in case of his refusal or neglect, by the local agent, or some competent person employed by him (*acting for and on account of whom it may concern*), without unnecessary delay, by handling, spreading, drying, re-folding and re-arranging; for which purpose such local agent or adjuster is entitled to free access to any property covered by policies of any companies he may represent, under which claims for loss or damage may have been made. Should the claimant object to, or in any way obstruct the access of the agent to such property, for such declared purpose, he will do so at his own peril. The agent should at once advise his company of the facts and await instructions.

All of the stock should be assorted, counted, weighed or measured, as the case may require, and the sound portion duly invoiced at the actual *cash* value. All that may be damaged should be selected out for submission to appraisers, and entered upon one of the appraiser's blanks usually furnished by the company. If none of the stock be totally consumed, the damaged portion only need be invoiced. Goods damaged by removal only should be entered separately. (*See Appraiser's schedule A.*)

Goods held in trust, or on commission, or sold but not delivered, or for which the insured may be liable, should be kept by themselves and accounted for separately. Such as the claimant does not own, yet may be liable for, which may be covered by his policy, should be inventoried and appraised by themselves in the same manner as the other property. It is important to the companies that this should be attended to in all cases.

When the damage to the stock is but partial, and few or none of the goods are totally destroyed, it will be only necessary to take the damaged stock into consideration.

When the damage is slight only to property, real or personal, it can often be settled without the necessity of a formal appraisement, or proofs. Agents will serve the interests of their companies by making such settlements, when the insured may be disposed to act fairly and honorably in the premises, without the intervention of appraisers, by whom, even with the best intentions, small losses are almost invariably augmented.

In the appraisement of mill property, such as machinery, engine, boilers, fixtures, and the like, the estimate for annual depreciation ranges from *ten* to *fifteen* per cent., from use alone; due and adequate allowance should likewise be made for age and condition. The estimate for damage should embrace all of these considerations. In case of reinstatement, the *money difference* between new and improved, and old, depreciated, and superseded machinery, should be distinctly borne in mind; as it is *indemnity* only that is guaranteed by the policy, not *gain* to the insured.

Machinery, in its strict acceptation, signifies any combination or modification of the well-known mechanical powers, which may possess the requisites of *force* or *motion*, either separately or combined. It may be either *fixed* or *movable*.

Adjusters frequently meet with serious difficulties in treating this class of hazards, from the indefinite and general manner in which the terms *fixed* and *movable machinery* have been used; owing to the lack of any distinct and uniform acceptation of these terms between insurers and insured. The former in case of loss contending for a strict construction, and the latter, very naturally, for the broadest latitude, so as to include everything that by the remotest contingency might need to to be called machinery.

This state of affairs will continue until underwriters shall put an end to it by more care and circumspection in the wording of their policies, so as to designate what shall be written upon as fixed and what as movable machinery.

Appraisers.

Much difficulty between the insured and adjusters has been caused by the ignorance of appraisers as to the *specific* duty they were selected to perform; hence they should be made to comprehend that their duty is *confined entirely to an estimate of damages* upon such property as may be submitted to them for appraisement; any other question touching the insurance is the province of the adjuster. or a matter of reference to the company.

Appraisers are mutually chosen (from parties who should have no pecuniary or other interests at stake, nor be in any way related to the insured), one by the insured, the other by the company, through its agent or adjuster; and in case of failure to agree, the two chosen select a third. They are sworn to the impartial performance of their duty; and are paid by the insured and the company equally. (*See forms.*) They should be practical business men; of good moral repute, and well acquainted with the current values of the articles submitted to them; and as their appraisement is final, as to the *measure of damage* to the property appraised, they are expected to discharge their duties in a conscientious and impartial manner.

So much depends upon the proper selection of an appraiser on behalf of the company, that no pains should be spared to procure the best talent to be had. The insured, being in the midst of friends whose prejudices would naturally incline them to favor him as much as possible, will usually have no difficulty in selecting a person to suit his own views. The interest of the company will require corresponding care on the part of the agent.

The appraisement of damage, to be satisfactory, must be in detail; that is, upon each separate article, when single, or by the dozen, yard, gallon or bushel, as the case may be, in form as per *schedule A*, of appraiser's blanks. All estimates by the lump, or in gross, or by percentage, should be ignored.

Blank forms containing the "*Agreement of submission* to *Appraisers*," the "*Appraiser's Declaration*," and the "*Appraiser's schedule*, or *inventory*," upon which all damaged property should be written, are usually furnished by the companies, and should be used in preference, as their contents are pertinent and well digested for the purpose.

The adjuster or agent should make it a point to be present during the appraisement, to watch over the interests of his company by preventing any unfair or fraudulent act on the part of the claimant or his appraiser, or carelessness on the part of the company's appraiser, to the injury of the company, should such be attempted, as has frequently been the case heretofore. and will be frequently hereafter, until human nature changes.

Where persistent effort is made by the insured, or his chosen appraiser to underestimate his stock, for the purpose of defrauding the company, the agent or adjuster should at once take such goods at the appraisal for the benefit of the company.

Notice of Loss by Insured.

The conditions of all fire policies require that *notice of loss or damage* shall be communicated to the office of the company, either *immediately* or *forthwith*, or within some specified number of days after the occurrence of the fire. It is uniformly held by the courts that notice, as required by the policy, is a condition precedent to recovery in any case, unless waived by the insurer.

"*Forthwith*," as applied to the notice required, has been strictly construed, in some decisions, to mean "immediately;" "directly;" without delay;" and more leniently in others, as meaning with "due diligence;" "within a reasonable time, under the circumstances of the case;" the whole, however, being questions for the jury as to the facts.

This notice is usually required to be in writing; but if the knowledge of such loss be fully communicated to the insurer by the claimant, the courts will not be very particular as to the *form* in which it is done.

Information of a loss through a third party, not interested, or from rumor, or from knowledge of the insurers themselves, or their agents, is not such notice as is required by the policy.

Notice to a duly authorized agent of a company, by the insured or his agent, is held to be notice to the company.

Notice by an assignee to whom a policy has been assigned, with consent of the insurer, is due notice.

Notice by mail, if within the requirements of the conditions of the policy as to time, is full compliance therewith.

Where the conditions of a policy required notice *forthwith*, it was held that a notice sent *eleven days* after the fire was too late, no sufficient reason being shown for the delay.

In another case it was held that a written notice of loss, served upon the company *eight* days after the occurrence of the fire, the officers of the company having had knowledge of such fire *five* days before receiving such written notice, was full compliance with the conditions of the policy relative to notice of loss.

The insurer may waive such notice, either directly or by implication, in consequence of some inconsiderate act by himself, or by his agent. But if the insurer has been once discharged from liability by want of timely notice, responsibility will not re-attach to him without proof of authority in the agents to waive such notice, or a new consideration to sustain it.

The receiving of notice by the insurer, to which no objection is made at the time, is no waiver of any delay that may have occurred in giving such notice.

The burden of proof as to the sufficiency of notice given, is upon the insured.

Preliminary Proofs.

In addition to the immediate notice of loss required by the policy, it is further made a condition precedent to right of recovery, in all fire policies, and subject to the same rulings as to sufficiency of notice, that in case of loss, the insured shall deliver to the insurer, "as soon thereafter as possible," or, in some policies, within a certain specified time, "a particular account of such loss or damage, signed and sworn to by him." The items of such particular account, upon which information is to be given, are set forth in detail in the condition of the policy requiring it; and when embodied in proper form are designated as *preliminary proofs.* (*See form.*)

Unlike the notice of loss, however, it is held that the reception of preliminary proofs, furnished in good faith, without objection to their *form*, is evidence of a waiver of any merely technical defect therein. Insurers must object *specifically* to any and all of such defects in *form*, in due season to enable the insured to remedy the same, if they mean to rely upon such defects as substantial. A refusal to pay, based upon grounds other than mere *formal* defects in the proofs, is considered a waiver as regards such defects.

On the other hand, when the conditions of the policy required the production of certain preliminary proofs, and the proofs furnished were defective, it was held that the mere reception of the proofs in silence did not amount to a waiver; and that the fact that the company did not object to the proofs, and gave to the insured no notice of any deficiencies, and made no request for further particulars, only amounted to receiving them in silence, from which the jury were not authorized to infer a waiver. To make a case of waiver, silence and something more is required; and that something must be more than simply equivalent to silence.

Although the preliminary proofs are called for by the insurer, and no objection is made to their regularity, yet the insured cannot prove

the amount or extent, as to value or quantity or quality, of his loss, or the particulars thereof, by his own statement. If there be nothing in the policy making such statement evidence as to the property lost, he cannot make such evidence for himself. Nevertheless, such preliminary proofs may be read to the jury, but only as evidence that there had been a compliance with the conditions of the policy requiring them; or for the purpose of refreshing the memory of a witness. The sufficiency of such preliminary proofs is for the courts; if not sufficient, the cause is at an end, unless an express or implied waiver by the insurer can be proved.

An affidavit of loss, made by the insured, estops him from denying in a subsequent suit on the policy, any of the material facts therein stated.

Preliminary proofs, though a condition precedent to recovery, may be waived, and hence are important only when made so by the insurer for whose security and information they are required. The waiver of notice of loss is not a waiver of preliminary proofs.

Blank forms of *preliminary proof*, embodying the requirements of the conditions of the policy, in case of loss or damage, are usually sent voluntarily by the insurer to facilitate the adjustment; which preliminary proof, with the necessary accompanying "*vouchers*," it will be the duty of the claimant to make up to the *satisfaction* of the company.

That such proofs shall be satisfactory does not imply such evidence as caprice may require; but such as may be pertinent to the facts of the loss, and would be likely to satisfy reasonable men.

When proofs submitted are not satisfactory to the company, the insured may be called on to reproduce his books and vouchers, and be examined and re-examined, under oath, touching the loss or damage.

When there are no suspicious circumstances attendant upon the loss, and where no effort to overreach the company by exactions not warranted by the policy is apparent, the agent *may* render all requisite assistance in the settlement of the claim; but when there may be reason to suspect dishonesty, or where the circumstances attending the loss are not perfectly clear and satisfactory, *the blank forms must be withheld;* and no assistance should be given to the claimant to the prejudice of the company's legal rights, until further developments shall indicate the proper course to be pursued.

Throughout the proofs of an honest loss, where all the needful data are ready at hand, there will always be a general and concurrent harmony of items pervading the whole, which is not apparent in fraudulent papers, where the data has been manufactured for the occasion. In the latter case, the most skillfully concocted proofs will present to the experienced adjuster some jarring discrepancy, or some important link will be missing, casting doubt and suspicion over the whole.

This difficulty in getting up false papers so as to deceive the practiced eye of the underwriter, has often proved the safety of the companies from fraudulent claims. The good points of an honest loss will always be apparent; it is the objectionable ones which secrete themselves and require unearthing.

The preliminary proof may be executed by any member of a firm, signing for the firm; or by any duly authorized agent for any party insured.

Fraudulent Swearing.

False swearing is held to mean any attempt to defraud the underwriter, by swearing intentionally, and with bad motives, to the existence of property which the insured had never lost; or by greatly overcharging that which was destroyed; or not acknowledging that which was saved.

Any *attempt* at fraud in making a claim for loss voids the policy under which the claim is urged.

Excessive over-valuations are presumptive of fraud; and false declarations, willfully made and so proven, void the claim

An affidavit of the value of the property lost, with intent to defraud, or not acknowledging property saved, is "false swearing."

The finding by a jury of less than half the amount claimed in affidavit of the claimant, held to be evidence of false swearing, and to void the whole claim, unless the claimant can show that the difference was the result of error and not of fraudulent intent.

If the statement of loss, sworn to by the claimant, is disproved by witnesses, he is precluded on that ground from recovery on the policy.

Fraudulent intent must be proven beyond a peradventure.

The National Board has adopted the following preamble and resolution upon the subject of false swearing in case of proofs of loss, viz.:

Whereas, The practice of false swearing, in proof of loss, has become alarmingly prevalent during the past few years, and is not only prejudicial to the interests of insurance companies, but is injurious to the public morals, and, in most, if not all of the states of this Union, is characterized and punished as a misdemeanor, be it

Resolved, That this Board most earnestly request the legislators of the different states to pass laws declaring all false swearing, in proof of loss, with intent to defraud, to be a penal offence, and that parties guilty of such false swearing be held, and deemed guilty of the crime of perjury, and punished accordingly.

Vouchers.

In all cases of adjustment there are certain necessary "*vouchers*" which, although *vitally essential* to the perfection of the proof, as representing the facts and figures upon which the preliminary proof is to be predicated, are too frequently entirely omitted. The proof of the amount of loss means not only the delivery of a statement or particulars of the claim, but the exhibition of such legal evidence to support it as the circumstances of the case will admit of; supported also by the oath or affirmation of the claimant. This proof or evidence should consist, first and *always*, of exact copies of the written portions of all policies of other companies interested in the loss, if any, giving date, time, amount of insurance, rate and amount of premium, with renewals and endorsements of each. (*See schedule A, form of preliminary proof.*)

In cases of stocks of goods, these "*vouchers*" consist further, of any cumulative, itemized evidence, going to prove the general statements called for by the preliminary proofs; usually taken from the books of account of the assured, such as the inventory of stock last taken; bills of purchase made since the inventory and up to the time of the fire; sales for cash or credit, during the same period of time; inventory of goods saved; appraiser's list of damages, &c., &c.

When these vouchers are voluminous it will be sufficient that they be submitted to and approved by the adjuster, who should scrutinize them carefully in detail; comparing values, examining extensions, footings, &c., &c., so as to detect errors, accidental or intentional. In this case, only the respective amounts need appear, in a condensed form, similar to that under head of "*Recapitulation*," page 72.

When required so to do, by the conditions of the policy, the insured must furnish his books of account and other vouchers in support of his claim, as far as lies in his power, and a refusal to do so, or any concealment, bars his right of recovery.

When the books and papers of the claimant have been destroyed by the fire, no rule can be given as to the manner of procedure. The burden of proof resting upon the assured, he must find vouchers of some satisfactory kind to sustain the claim.

The course usually pursued in such a contingency is to call for duplicate bills of purchase for some time back, and such other documentary evidence as can be procured that will throw light upon the subject. The insurer cannot compel the claimant to furnish such duplicate bills of purchase, or other documentary evidence, not under his control.

It often happens also, that no books of account are kept; or if kept, it is in so careless a manner as to afford but small service in the proper adjustment of the loss. In such cases the parties usually rely upon memory to make up the deficiency; and it is a remarkable coincidence that in all such cases the claimants have such excellent memories that they can remember almost the exact amount of stock on hand at the time of the fire. Another uniform coincidence in such cases is the fact that the amount so well remembered is usually large enough to swallow up all of the insurance! Agents should scrutinize such cases very closely, or the company's interest will suffer in consequence.

Many times also, the claim that the books of account have been burned is fraudulent. In numerous instances new books of account have been fabricated, or old ones made up for the occasion, showing heavy balance against the insurers. All of these should be most critically examined and the claimant should be made to produce *satisfactory* evidence before the claim is admitted. Books of account of the insured are entitled to no further weight than the proof of the witnesses who may be examined as to their accuracy will justify. Here is work for an old book-keeper and experienced adjuster, if anything is to be saved for the underwriters.

In smaller stores it is frequently the custom to take articles out of the stock for family and other uses, without making any entry thereof upon the books, inasmuch as "it didn't cost anything, 'cause it come out of the store." In this way quite a large amount might be, and often has been taken and paid for by the underwriter as loss. It is but justice that the sums thus appropriated should be credited to the company in the proofs.

In cases where a firm has been in business for a number of years,

a large amount of old, shop-worn, and deteriorated stock will accumulate, upon which a discount of *ten*, *fifteen* or *twenty-five* per cent., or even more, should be made, to bring it to its cash value at the time of adjustment. The new form of policy has a condition relative to depreciation of stock.

New stock will be bought from time to time to "kitchen" up and help to dispose of the old stock; but the larger portion of the daily sales will be of the new goods; the "shopkeepers" will disappear slowly. *Note this!*

On mills and machinery losses the adjustment is usually so complicated and important in consequence of the sums involved, that experienced men only are entrusted with the management of the case; and as a number of companies are usually interested in such losses, it is customary to select a committee from those interested, to whom the adjustment is entrusted.

In cases of loss or damage to buildings the "*vouchers*" will be the "bid" or "estimate" of some responsible builder as to the sum for which he will *contract* to rebuild or repair the premises, and not his simple *valuation* of what the loss or damage may appear to be. (*See Loss on buildings.*)

On household property, the "*vouchers*" should be a list, with present *cash* values, after making allowance for use, of the furniture destroyed; or in case of damage only, if of any extent, by submission to appraisers; but the most satisfactory way is by mutual agreement of owner and adjuster. A skillful adjuster can save time and money by dispensing with appraisers, and going through the loss with the claimant himself, in this class of cases.

Evidence

As to Proof of Loss: A statement of the insured, in a claim for loss, with affidavit attached, is not admissible as conclusive evidence of the amount of loss.

Affidavit, account of loss, and other preliminary proofs, are evidence that the requirements of the policy have been complied with in that

respect; but are not admissible as to the amount of loss. Such affidavit, however, estops claimant from denying, in a subsequent suit, any of the material facts therein stated.

An offer to sell property at a certain price is evidence against the party offering, that it was not worth more.

Evidence to show that damage consequent upon the fire was less than that claimed, would be admissible; but the doctrine of mitigation of damages has no application.

Preliminary proofs are not admissible in evidence to the jury, on the question as to the amount of damages, unless the policy has made them so.

Invoices, books of account, sales and inventories of stock, taken immediately after the fire, and the testimony of the clerk of the insured, are proper evidence of the loss by removal of goods, when endangered by fire.

If the conditions of the policy represent one class of property as more hazardous than another, it is not competent to show that it was not so in fact.

Opinions are only admissible on questions of science or professional or mechanical skill; and then only from witnesses skilled in the particular business to which the question relates.

Opinions of experienced underwriters, as to the increase of risk from certain exposures; held, to be a question for the jury, and not of science or skill.

Opinions of witnesses as to value of property only known by description; held, inadmissible.

Fraud: Testimony of previous good character, to rebut evidence of fraud, is not admissible in a civil suit.

Estimating Profits.

The mode of arriving at *profits* on sales, for the purpose of correct adjustment, is ordinarily by estimate, as few parties keep their books of account in such a manner as to be able to indicate the rate per cent. of their profits correctly.

Much discretion and judgment should be exercised in this seemingly minor matter of estimating the amount of profits to be allowed upon sales, as the amount of stock on hand at the time of the fire is seriously affected thereby; as the larger the ratio of profit allowed, the smaller will be the amount saved to the credit of the company, and *vice versa.*

While the agent should not be hypercritical and unduly close-fisted upon this point, he should nevertheless be watchful that it is not overcharged, through accident or design.

The *modus operandi* of ariving at the *cost* of goods where only the amount *sold* is given, at an estimated rate per cent. of profit, is the same as used by bankers in the estimate of interest and discount. Being somewhat peculiar, a rule for working it, a table of percentage from *ten* to *fifty* per cent. and examples in detail, are given to explain them clearly:

Table of Percentage.

For	10	*per cent., divide by*		11	*For*	25	*per cent., divide by*		5
"	$12\frac{1}{2}$	"	"	9	"	30*	"	"	130
"	15*	"	"	115	"	$33\frac{1}{3}$	"	"	4
"	20	"	"	6	"	50	"	"	3

Rule for Using the Table.

Divide the amount of *sales* by the given figure in the table, opposite the rate per cent. agreed upon; the result will be the *profits* upon the sales. This sum deducted from the *sales* will produce the net *cost* of the goods.

Proof: Divide the cost, thus found, by the rate per cent., the result will be the *profits*, which added to the *cost*, will give the *sales* again.

* The manner of estimating for 15 and 30 per cent. is slightly different from the others. In case of these figures, the *rule* is as follows: The sum of the *sales*, with two cyphers added, divided by the given figures for the rate per cent., will give the *cost* of the goods direct, which cost deducted from the *sales* will indicate the profits.

Proof: Same as for the other process.

Examples.

First: Amount of sales supposed to be $1,500.
Estimated profit on same, say 10 per cent.

Now $1,500, divided by 11, the figure indicated for 10 per cent., gives $136.36, representing the *profit*, which deducted from the sales, $1,500, leaves $1,363.64 as the *cost* of the goods.

Proof: Divide $1,363.64, *cost* of goods, by 10, the per cent., the result is $136.36, or the *profit* first obtained; this added to $1,363.64, the *cost*, gives $1,500 again, the sales.

Second: Divide $1,500.00 by 115, the figures indicated for 15 per cent., and the result is $1,304.35, the *cost* of the goods; which deducted from the *sales* $1,500, leaves $195.65 as the *profits;* which is exactly 15 per cent. of the *cost* as found.

Proof: Same as above.

Apportionment of Loss,

Or Contribution,

Is ascertaining the proportion that each policy written upon all or any proportion of the property covered must contribute toward the payment of the loss; whether such policies cover concurrently or non-concurrently, by the specific, general or floating forms.

From the nature of the contract the insured cannot receive more than the amount of the loss, in how many different companies soever he may hold policies upon the same subjects. Nor can he recover from any one company more than its ratable proportion of the loss. If he has failed to cover the whole risk, he is considered as his own insurer for the excess of value.

In making up an apportionment of loss among the several companies interested, all existing policies must be included, even though a company issuing any one or more of them may have since become insolvent; or the policy may be void from any cause.

Where there may be existing policies of several different companies interested in the same loss, but which are *not concurrent*, the apportionment becomes more or less complicated; and in many cases will require much skill and experience to make the division correctly; the more especially as up to this time there has been a great diversity of opinion and practice among underwriters as to how *general* and *floating* policies should be made to contribute with each other, or with *specific* policies, upon the same loss.

When the aggregate liability upon all of the policies at risk is not more than sufficient to pay the loss, there can be no question between the insurers, each company paying according to its contract; and the insured suffers from any deficiency. But when the loss is less in amount than the liability, then arise questions of apportionment, as follows, viz.:

First. As between specific policies, when the subject covered in one policy is combined with another subject in another policy.

Secondly. As between specific policies and general or floating policies, covering upon the same subjects.

Thirdly. As between general or floating policies, when non-concurrent, in the same or different localities.

The *mixed*, and often conflicting liabilities under non-concurrent policies give rise to cases for which it is exceedingly difficult, if not impossible, to find a really equitable principle of adjustment as set forth in any of the existing rules. The result has been that some most arbitrary and oftimes opposing practice has been forced into use in adjusting such losses; the greatest difficulty, however, being in the apportionment of the contribution between the companies, rather than as affecting the insured.

These difficulties should operate as a strong incentive, to both the insurer and the insured, to spare no pains to have all joint insurances upon the same subjects made really concurrent in their details.

Several essentially different rules for the adjustment of mixed cases of loss have found advocates among fire underwriters. The most prominent among these are known as the *Albany rule;* the *Finn rule* and the *Reading rule;* with others having no specific designation. To these the National Board of Fire Underwriters has added another, which is inserted among the conditions of the new form of policy, and has been adopted by some of our city companies, while others of them have ignored it as a part of the policy.

No particular method of adjustment, however specious it may appear, can be made a *standard* or general rule, unless it will provide for, and apply to *all* the variations of loss that might happen under one set of policies. Anything *short* of this could not reasonably be considered *a rule*, and would not fail to work injustice to some of the parties in interest, under certain circumstances.

The several *rules* above referred to are as follows, viz.:

Albany Rule.

If, at the happening of any fire, the insured shall have other insurance which includes the premises or property herein insured, provided such policy or policies shall at any time, or under any circumstances or contingency, be liable to the insured for any amount

whatever, such policy or policies, as between the insured and this company, shall be considered as co-insurance and liable to contribution, anything in said policy or policies to the contrary notwithstanding.

Finn Rule.

If, at the happening of any fire, the insured shall have a policy or policies covering, in one sum, property or interests other than is expressly covered by this insurance, and at the same time including and covering the specific property herein (by this policy) expressed, then, to determine the amount for which this company is liable, such more general policy, as between the insured and this company, shall be considered other insurance on the specific property on which loss is claimed, in proportion *as the loss thereon shall bear to the loss* (happening at the same time) *on all the property* covered by such more general policy.

Reading Rule.

If, at the happening of any fire, the insured shall have a policy or policies covering, in one sum, property or interests other than is expressly covered by this insurance, and at the same time including and covering the specific property or interest herein expressed, then, to determine the amount for which this company is liable, such more general policy, as between the insured and this company, shall be considered *other insurance* on the specific property on which loss is claimed, in proportion as the sound value thereof shall bear to the value of all the property covered by such more general policy.

Another Rule.

If, at the happening of a fire, the insured shall have insurance, by a policy or policies, covering in one sum property or interests other than is covered by this insurance, and at the same time including the specific property or interest hereby insured, then, to determine the amount for which this company is liable under this policy, the amount of such more general policy or policies shall be held to apply to and cover the separate properties or interests covered thereby, so that, as nearly as the amount of such more general insurance will permit, such several properties or interests shall each be insured in the proportion that the whole insurance thereon, including the amount insured by both general and specific policies, bears to the sound value of all the property covered thereby.

National Board Rule.

If, at the happening of any fire, the insured shall have a policy or policies covering in one sum property or interests other than is expressly covered by this insurance—and, at the same time, including and covering the specific property or interest herein expressed; then, to determine the amount for which this company is liable, such more general policy, as between the insured and this company, shall be considered other insurance on the

specific property on which loss is claimed, in proportion as the sound value thereof shall bear to the value of all the property covered by such more general policy. Again, if at the happening of any fire the insured shall have a floating policy or policies, not specific, but covering goods generally, in various places not designated, and yet within limits which include the premises or property herein insured, such policy, as between the insured and this company, shall be considered as covering any excess of sound value of the subject insured beyond the amount covered by the specific insurances thereon; and to determine the amount for which this company is liable in case of loss, such floating policy shall be considered an insurance on the property to the extent of such excess; and in every case which may arise under this *seventh* condition the insured or party claiming loss shall render such statements and accounts as will enable the parties interested to make the adjustments as aforesaid; and all settlements under this rule shall be without regard to any terms, conditions or settlements then or before or thereafter made by and between the insured and any company or underwriter issuing such general or floating policies.

The *seventh* condition referred to is as follows:

7. In case of any other insurance upon the property hereby insured, whether made prior or subsequent to the date of this policy, the insured shall be entitled to recover of this company no greater proportion of the loss sustained, than the sum hereby insured bears to the whole amount insured thereon, whether such other insurance be by specific or by general or floating policies.

The two following *new* rules were submitted to the National Board, by Mr. Oakley, of the Committee on Form of Policy, but no action was had on them other than to order them printed with the proceedings.

Oakley Rules.

First: If, at the happening of any fire, the insured shall have insurance, by a policy or policies, covering in one sum property or interests other than is expressly covered by this insurance, and at the same time including the specific property or interest herein expressed, such insurance shall be considered other insurance on the property hereby insured for the full amount of such policy or policies, unless, in consequence of loss on property covered by such general insurance and not included in this policy, it becomes necessary to divide the amount of such general insurance; and in that case to determine the amount for which this company is liable, the amount of such more general insurance, as between the insured and this company, shall be considered other insurance on the specific property, on which loss is claimed under this policy, in the proportion that the sound value of such property, in excess of the insurance covering it only, bears to the sound value of all the property covered by such more general policy or policies, in excess of all specific insurance thereon. If, however, the sound value of the property covered by this policy, and included also in such more general insurance, shall not exceed the amount specifically insured thereon, then the amount of such more general insurance shall be deemed to be other insurance on such property, in the proportion that the sound

value thereof bears to the sound value of all property covered by such more general policy or policies; and if the insured shall have insurance covering a part only of the property insured by this policy, so that it becomes of such more general character, the claim of the insured against this company shall be adjusted as above expressed.

Second: If, at the time of loss, the insured shall hold a general policy or policies, covering in one sum more than one specific property or interest, and shall also have a policy or policies covering only a specified property or interest, which is included within range of the more general policy, in such case the loss on the specific property or interest shall be first adjusted *pro rata* among all the insurance covering the same, be the policies general or specific; but if the loss on the article or articles, not covered by the specific insurance, shall require a greater sum than is left of the general insurance, after the adjustments as aforesaid, then, to make up such deficiency so much of the general insurance shall be released from contributing to the specific property, and an equal amount of the specific insurance (not before appropriated) shall take its place in payment of the specific articles. If there be different specific insurance interests affected by such readjustment, they shall contribute to make up the amount required, *pro rata*, of the amounts they would otherwise have to pay.

The foregoing rules were evidently intended by their framers to embrace the general principles of adjustment of fire losses; and more especially to provide for those cases where diverse and, not unfrequently, contending principles become, in some of the combinations of the policies in interest, so strangely complicated or mixed, as will sometimes occur; and however much they may fail, individually or collectively, to win the approval of the great body of underwriters, as to their uniform correctness, and infallible applicability to the end proposed, they have, nevertheless, in the absence of any fixed or acknowledged law, or even uniformity of usage, as at present, an important bearing as being the results of the experience of those individuals who have applied their energies to an investigation of the subject, with a view to harmonize conflicting elements and elucidate and simplify the process of arriving at the correct solution of this vexed problem.

In view of such divergent opinions among the wise men of the profession, as to the general principles governing the mode of contribution by *general* and *floating* policies, and the fact that each adjuster will endeavor to adopt that mode which shall be most advantageous to his own company at the time; and, until some well recognized, uniform system shall be adopted by all underwriters, it will be only necessary to add in this connection, that all *rules* for the apportionment of loss

must consider the rights of the insured as well as those of the insurer, and secure to him full indemnity in all cases: for the uniform decisions of the courts have been that no apportionment of a loss can be made between the insurers at the expense of the insured. In other words, when the *amount* insured is sufficient to cover the loss on the *subject* insured, no apportionment between companies, having non-concurrent policies, is allowable that would fail to pay the full amount of such loss.

Resumé.

When satisfied fully as to the honesty of the loss and the fairness of the claim under it, the adjuster, by his knowledge of the forms and familiarity with the routine of such business, can frequently save time for himself, and procure more satisfactory papers for his company, by assisting the claimant in making up the proofs. But if there be any suspicious or unsatisfactory circumstances attending the case the utmost care and circumspection should be observed in admitting any claim, or binding the company by any admissions, without proper authority.

When the claim has been thoroughly scrutinized under the foregoing suggestions, and the ownership in the property is fully established; the several vouchers satisfactorily executed; the stock duly arranged and invoiced, and the amount of damage ascertained by the appraisers, the claimant is ready to make up his statement as nearly as may be in one of the several forms on the following pages; and the results therefrom should be transferred to the "preliminary proofs," and the statement should accompany such proofs as *schedule B*.

Forms of Statement.

First Statement;

Of partial loss or damage, under several specific policies, *not* entirely concurrent, on building and stock, with the contribution of the several companies.

CLAIM.

Damage to build'g per appais't,	*$225.00*	
Sundry repairs made per voucher,	*16.70*	
Total damage to building,		*$241.70*
Damage to stock as per appraisement,		*18.00*
Total damage,		*$259.70*

INSURED AND APPORTIONED AS FOLLOWS:

NAME OF COMPANY.	INS. ON BUILDING.	INSURANCE ON STOCK.	PAY ON BUILDING.	PAY ON STOCK.	TOTAL PAYMENT.
Numkeag Fire Insurance Co.,	*$500*	*$300*	*$26.85*	*$0.42*	*$27.27*
Quinebaug Fire Insurance Co.,		*2,500*		*3.50*	*3.50*
Eureka Mutual Insurance Co.,	*500*	*900*	*26.85*	*1.32*	*28.17*
Eldorado Fire & Marine Ins. Co.,	*500*	*300*	*26.85*	*.42*	*27.27*
Combustible Fire, Life & Marine,	*250*	*2,650*	*13.43*	*3.73*	*17.16*
Northwestern Fire & Life Ins. Co.,	*1,000*		*53.73*		*53.73*
Home Mutual Insurance Co.,	*500*	*2,800*	*26.84*	*4.00*	*30.84*
Fidelity Fire Insurance Co.,	*1,000*	*600*	*53.72*	*.88*	*54.60*
White County Mutual Ins. Co.,	*250*	*2,650*	*13.43*	*3.73*	*17.16*
Totals,	*$4,500*	*$12,700*	*$241.70*	*$18.00*	*$259.70*

In this case, the damage to the stock being small, and easily ascertainable, no account was taken of the sound goods. The amount of the liability of the companies was reached by a direct estimate of the loss, which consisted entirely of damage to the subjects insured, without any complete destruction of any part of the property.

Second Statement;

Under a simple *specific* policy, in which several companies are supposed to be interested, *concurrently*, with the apportionment or *contribution* of each. This forms part of the preliminary proofs, as *schedule B.*

Recapitulation.

Amount of Stock per last Inventory, Jan. 1, 1867; voucher submitted,		*$10,000.00*
Amount of purchases from Jan. 1, 1867, to date of fire, March 27, 1867; vouchers submitted,		*2,500.00*
Total Stock,		*$12,500.00*
Deductions, *viz.:*		
For Sales for cash or credit, from Jan. 1, 1867, to March 27, 1867, per vouchers submitted,	*$4,200.00*	
Less estimated profits, 25 per ct.,	*840.00*	*3,360.00*
**Leaving Stock on hand at time of fire,*		*$9,140.00*
Further Deductions, *viz.:*		
For deterioration in value, shop-worn stock, &c., 10 per cent.,	*$914.00*	
For articles used in claimant's family, or taken out for any purpose, and not charged in account,	*100.00*	
Amount of Stock saved in good order, as per Invoice,	*5,440.75*	
Amount saved damaged, estimated by the appraisers as sound,	*660.25*	*7,115.00*
**Leaving Total Loss,*		*$2,025.00*
Insured and Apportioned as Follows:		
**North Amer. Ins. Co., $2,500, pays* $\frac{5}{13}$	*$778.85*	
Jamestown " " 2,500, " $\frac{5}{13}$	*778.85*	
Morris " " 1,500, " $\frac{3}{13}$	*467.30*	
Total Insurance, $6,500, pays		*$2,025.00*

* These three items are called for in the "preliminary proofs" for each company.

Third Statement.

The following is made up from the memoranda of an actual adjustment of loss and damage upon a manufacturing establishment, under *thirteen* different policies, covering *seven* different subjects, as given below, being partly specific and concurrent; partly general and non-concurrent, and wholly mixed.

The loss was total on some of the subjects and partial on others, which made it a very nice point of adjusting to arrive at the true apportionment of the amount of insurance upon each item of the several subjects. The process by which the contribution was arrived at is given in detail, and will form a very interesting study for the tyro in underwriting. The companies are indicated by numbers, in the following tables.

Recapitulation of the Policies.

Companies designated by Nos. How Covering upon the Risk.	Stock and Materials.	Engine and Fixed and Movable Machinery.	Engine, Shafting, Hangers, Pulleys and Belting.	Machinery, Tools, Implements and Fixtures.	Tools and Fixtures, Pulleys and Belting.	Water and Cog-wheels.	Building.	Total Insurance in each Company.
Comp'y No. 1	. . .	$1,000	. . .	. . .	. . .	. . .	. . .	$1,000
" 2	$500	. . .	$500	$500	. . .	. . .	. . .	1,500
" 3	500	. . .	500	500	. . .	. . .	. . .	1,500
" 4	500	. . .	500	500	. . .	. . .	$1,000	2,500
" 5	1,000	. . .	1,000	1,000	. . .	. . .	. . .	3,000
" 6	500	. . .	500	500	. . .	. . .	. . .	1,500
" 7	. . .	1,000	. . .	. . .	. . .	. . .	1,000	2,000
" 8	750	. . .	. . .	. . .	$1,500	. . .	1,500	3,750
" 9	500	. . .	. . .	. . .	1,000	$1,000	. . .	2,500
" 10	750	. . .	. . .	. . .	1,500	. . .	. . .	2,250
" 11	. . .	. . .	. . .	. . .	. . .	. . .	2,500	2,500
" 12	. . .	. . .	. . .	. . .	. . .	. . .	1,500	1,500
" 13	. . .	. . .	. . .	. . .	. . .	. . .	1,500	1,500
Totals,	$5,000	$2,000	$3,000	$3,000	$4,000	$1,000	$9,000	$27,000

The loss, as ascertained and reported by the appraisers, was in the following form and amounts, viz.:

Loss.

Machinery, Shafting, Pulleys and Hangers,	*$5,928.14*
Engine,	*2,000.00*
Fixtures,	*1,218.86*
Tools and Implements,	*738.73*
Belting,	*951.00*
Stock and materials,	*3,245.00*
Water and Cog-wheels,	*1,400.00*
Building,	*7,146.00*
Total,	*$22,627.73*

With a view to embrace the greatest number of policies bearing concurrently upon the several subjects of the loss, and thereby simplify the process of arriving at the ratio of contribution, the losses were *classified* under the following heads and amounts, being as equitably apportioned in accordance with the terms of insurance as the "mixed" nature of the several policies would admit. Upon this classification the adjustment is predicated, viz.:

Classification of Loss.

Engine,	*Loss,*	*$2,000.00*
Pulleys,	*"*	*200.00*
Belting,	*"*	*951.00*
Shafting and Hangers,	*"*	*400.00*
Tools and Fixtures,	*"*	*1,957.59*
Machinery,	*"*	*5,328.14*
Stock and materials,	*"*	*3,245.00*
Building,	*"*	*7,146.00*
Water and Cog-wheels,	*"*	*1,400.00*
Total,		*$22,627.73*

CONTRIBUTION.

The contribution will be under the two forms—concurrent and specific, viz.:

FIRST: CONCURRENT INSURANCE.

In apportioning the loss among the companies interested concurrently, we first find the *insurance* upon the several items by the process given below. This point ascertained the apportionment of the PAYMENT of the loss is easy.

Companies numbered *one* and *seven* cover conjointly to the amount of $2,000, upon subjects, the loss upon which is $7,928.14, as follows, being 25.227 per cent.* of the insurance, viz.:

On Engine,	.	.	*loss,*	*$2,000.00,*	*at*	*25.227*	*per ct., gives*	*$504.54*
" Machinery,	.	"		*5,328.14*	"	"	"	*1,344.10*
" Pulleys,	.	.	"	*200.00*	"	"	"	*50.45*
" Shaft'g & Hangers,			"	*400.00*	"	"	"	*100.91*
Total Loss,	.	.		*$7,928.14*	*Total Insurance,*			*$2,000.00*

These amounts give the insurance, *jointly*, by these companies, upon each item; by being divided *pro rata* the liability of each is ascertained.

Companies numbered *two*, *three*, *four*, *five* and *six* cover in the same manner to the amount of $3,000, upon subjects, the loss on which is $3,551.00, being 84.485 per cent. of the insurance, viz.:

On Engine,	.	.	*loss,*	*$2,000.00,*	*at*	*84.485*	*per ct., gives*	*$1,689.66*
" Belting,	.	.	"	*951.00*	"	"	"	*803.43*
" Pulleys,	.	.	"	*200.00*	"	"	"	*168.97*
" Shaft'g & Hang'rs			"	*400.00*	"	"	"	*337.94*
Total Loss,	.	.		*$3,551.00*	*Total Insurance,*			*$3,000.00*

being the respective amounts of joint insurance by these companies upon each item.

* This percentage is obtained by dividing the amount of insurance by the amount of loss; when the divisor is larger than the dividend add cyphers to the latter, omitting the cents in the divisor.

These same companies cover also, in the same manner, to the amount of $3,000, on other subjects, the loss on which is $7,285.73, being 41,174 per cent. of the insurance, viz.:

On Machinery,	*loss,*	*$5,328.14,*	*at 41.174 per ct., gives*		*$2,193.81*
" Tools & Fixtures,"		*1,957.59*	*" " " "*		*806.19*
Total Loss,	.	*$7,285.73*	*Total Insurance,*		*$3,000.00*

being the respective amounts of joint insurance, by these companies on these two items, in addition to those before named. A *pro rata* division among the companies will give the liability of each one.

Companies numbered *eight*, *nine* and *ten* cover in the same manner, to the amount of $4,000, on subjects, the loss on which is $3,108.59, being 128.658 per cent. upon the insurance, viz.:

On Pulleys,	. .	*loss, $200.00,*	*at 128.658 per ct., gives*		*$257.00*
" Belting,	. .	*" 951.00*	*" " " "*		*1,223.00*
" Tools & Fixtures,"		*1,957.59*	*" " " "*		*2,520.00*
Total Loss,	. .	*$3,108.59*	*Total Insurance,*		*$4,000.00*

being the respective amounts of *joint* insurance by these companies upon each item; a *pro rata* division gives the liability of each.

SECOND: SPECIFIC CONTRIBUTION.

Companies numbered *one*, *four*, *seven*, *eleven*, *twelve* and *thirteen*, cover upon the building, to the amount of $9,000, concurrently, the loss on which is $7,146, being 125.943 per cent. upon the insurance; a *pro rata* division among the insurers gives the liability of each.

Companies numbered *one*, *two*, *three*, *four*, *five*, *six*, *eight*, *nine* and *ten*, cover upon the stock concurrently to the amount of $5,000, the loss on which is $3,245, being 154.083 per cent. upon the insurance; by a *pro rata* division of which the separate liabilities can be computed.

Company numbered *seven* covers upon the wheel to the amount of $1,000, on which the loss is $1,400, or total.

The respective ratio of contribution of each company toward the insurance having been thus obtained, becomes the basis of the proper apportionment of payment of the loss *pro rata*, among the insurers, for which see final statement.

EXCESS OF LOSS ABOVE CONCURRENT CONTRIBUTION.

By an examination of the figures and statements thus far made, it will be seen that while the *concurrent contribution* has exhausted some of the policies, others remain unexhausted; and as the loss upon some of the subjects covered by the insurance still remains unliquidated, the excess of those unexhausted policies must be applied, *pro rata*, to the payment of the unliquidated loss as far as such excess will go in that direction.

We find such excess to be as follows, viz.:

Companies numbered *one* and *seven* cover on machinery $2,000 and pay concurrently with the others $1,918.92, leaving a balance unexhausted of $81.08 to be applied on excess of loss on machinery, beyond concurrent contribution; or $40.54 each.

Companies numbered *two*, *three*, *four*, *five* and *six*, cover on machinery and tools $3,000 and pay concurrently with the others, on tools $474.33, and on machinery $2,193.81, leaving an unexhausted balance of $331.86 beyond concurrent contribution, to be applied *pro rata*, upon the loss on machinery in excess of concurrent contribution.

Having thus arrived at the amount insured by the several companies upon each item, and knowing the amount of loss upon each subject, the ratio of contribution toward payment is readily found. The following TABULAR STATEMENT will present at one view, the amount of insurance and the amount of loss, in gross and upon each subject, with the contributions to the insurance and to the payment of loss, both concurrently and for the excess on machinery, by each company.

STATEMENT OF

COMPANIES.	ENGINE.		PULLEYS.		BELTING.		SHAFT & HANGERS		TOOLS & FIXTURES.	
	Insured, $2,194 20 Loss, - $2,000 00 Pays, 91.10 per ct.		Insured, $476 42 Loss, - $200 00 Pays, - 42 per ct.		Insured, $2,026 43 Loss, - $951 00 Pays, 46.934 per ct.		Insured, $438 85 Loss, - $400.00 Pays, 91.33 per ct.		Insured, $3,326 19 Loss, - - $1,957 59 Pays, - 58.86 per ct.	
No.	Insures.	Pays.	Insures.	Pays.	Insures.	Pays.	Insures.	Pays.	Insures.	Pays.
1	252 27	231 10	25 22	10 54	.....	.....	50 46	45 77	.....	.....
2	281 61	256 30	28 17	11 83	133 90	62 88	56 33	51 41	134 36	79 06
3	281 61	256 30	28 16	11 83	133 90	62 88	56 32	51 41	134 37	79 05
4	281 61	256 30	28 16	11 83	133 91	62 88	56 33	51 41	134 36	79 06
5	563 22	512 60	56 33	23 66	267 81	125 74	112 64	102 82	268 73	158 11
6	281 61	256 30	28 16	11 83	133 90	62 88	56 32	51 41	134 37	79 05
7	252 27	231 10	25 23	10 54	.....	.....	50 45	45 77	.....	.....
8	.....	.....	96 37	40 53	458 63	215 16	.....	.....	945 00	556 22
9	.....	.....	64 25	26 96	305 75	143 43	.....	.....	630 00	370 82
10	.....	.....	96 37	40 45	458 63	215 15	.....	.....	945 00	556 22
11	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
12	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
13	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Pay	.....	2,000 00	.....	200 00	.....	951 00	.....	400 00	.....	1,957 59
Ins'ed	2,194 20	.....	476 42	.....	2,026 43	.....	438 85	.....	3,326 19	.....

RECAPITULATION.

Total amount of Insurance, - - - $27,000 00

Total amount of Loss, 83.80 per cent. of Insurance, equals $22,627 73

Total payment of Loss, 77.224 " " " 20,850 44

Excess of Loss, - - - - $1,777 29

CONTRIBUTION.

MACHINERY.			STOCK.		BUILDING.		WATER WHEEL.		TOTALS.	
ured, $3,537 91 s, - $5,328 14 s, - Total,		Loss over Concurrent Insurance $1,790 23	Insured, $5,000 00 Loss, - $3,245 00 Pays, 64.90 per ct.		Insured, $9,000 00 Loss, - $7,146 00 Pays, 79.40 per ct.		Insured, $1,000 00 Loss, - $1,400 00 Pays, - Total,		Insured, $27,000 00 Loss, - $22,627 73 Pays, 77.224 per ct.	
ures.	Pays.	Pays.	Insures.	Pays.	Insures.	Pays.	Insures.	Pays.	Insures.	Pays.
72 05	672 05	40 54	.....	.....	.....	.....	.....	.....	1,000 00	1,000 00
35 63	365 63	55 31	500 00	324 50	.....	.....	.....	.....	1,500 00	1,206 92
35 64	365 64	55 31	500 00	324 50	.....	.....	.....	.....	1,500 00	1,206 92
65 63	365 63	55 31	500 00	324 50	1,000 00	794 00	.....	.....	2,500 00	2,000 92
81 27	781 27	110 62	1,000 00	649 00	.....	.....	.....	.....	3,000 00	2,413 82
65 64	365 64	55 31	500 00	324 50	.....	.....	.....	.....	1,500 00	1,206 92
72 05	672 05	40 54	.....	.....	1,000 00	794 00	.....	.....	2,000 00	1,794 00
.....	.....	.....	750 00	486 75	1,500 00	1,191 00	.....	.....	3,750 00	2,489 66
.....	.....	.....	500 00	324 50	....	.....	1,000 00	1,000 00	2,500 00	1,865 71
.....	.....	.....	750 00	486 75	.....	.....	.....	.....	2,250 00	1,298 57
.....	.....	.....	.....	.....	2,500 00	1,985 00	.....	.....	2,500 00	1,985 00
.....	.....	.....	.....	.....	1,500 00	1,191 00	.....	.....	1,500 00	1,191 00
.....	.....	.....	.....	.....	1,500 00	1,191 00	.....	.....	1,500 00	1,191 00
.....	3,537 91	412 94	.....	3,245 00	.....	7,146 00	.....	1,000 00	.....	20,850 44
37 91	.....	.....	5,000 00	.....	9,000 00	.....	1,000 00	.....	27,000 00	.....

[CONTINUED.]

Excess of Loss over payments, - - - - - $1,777 29

Made up as follows, viz.: Excess on Machinery, $1,377 29

" " Water Wheel, 400 00 $1,777 29

Gross Salvage, 22.776 per cent. of Insurance, equals $6,149 56

In making up the foregoing forms of statements, much pains have been taken to introduce interesting and important points as they occur in adjustments; and at the same time to elucidate and explain, in a clear and concise manner, how the various results have been obtained, so that they may serve as examples upon which agents can base the solution of similar problems, should any such arise within their experience.

Every agent should endeavor to become so thoroughly acquainted with the several points essential to a correct adjustment of fire losses, that he may not be found wanting in the requisite knowledge when called upon to exercise his skill in behalf of his company; and nothing will more surely indicate the master of his profession than the ability to present a full, succinct and intelligible exhibit of the results of a complicated adjustment.

Payment of Claims.

Losses are due and payable by the terms of most policies, in sixty days after the proofs, required by the conditions of insurance, shall have been received at the parent office, and the loss shall have been satisfactorily ascertained and proved, as indicated by the terms of the policy; unless the underwriter shall have previously given notice of an intention to replace the articles lost, or to rebuild or repair the damaged premises. But until all such proofs, declarations and certificates are produced, and examinations and appraisals permitted by the claimants, as required by the conditions of the contract, the loss is not deemed to be payable.

Under the above cited conditions of the policy it is held that such preliminary proofs must be submitted to the company at least sixty days before the commencement of suit.

The adjustment of a loss is an admission, upon the supposition of certain facts, that the insured is entitled to recover on the contract of insurance; and is simply a promise to pay, which is only binding when founded upon a previously admitted liability; but until the underwriter has paid the money he is at liberty to avail himself of any defence which the facts, or the law of the case will furnish.

When a policy is made in the names of several persons, or of a firm, any one of them can give a legal discharge and release of the debt, in the joint names of the parties; but it is customary, and more proper, to require a joint receipt from as many of the claimants as can be found to execute the same.

After a loss has been paid, on the discovery of any fraud, misrepresentation or concealment of material facts in the original contract; or should any circumstances transpire which would have justified a resistance to the claim, but which the underwriter had no means of ascercertaining at, or prior to, the time of payment, the money paid may be recovered; unless, in the absence of fraud, the payment was made

under pressure of the law. But where the insurer knew, or might have learned upon inquiry, all of the circumstances upon which the claim might have been resisted, then in the absence of actual fraud, the money cannot be recovered.

Underwriters owe it to the public as well as to themselves, to see that no loss is *over-paid*, or paid at all, until after a thorough investigation has been made and the absence of fraud is apparent. The practice of hurrying adjusters to the scene of the fire before its ashes have cooled; racing horses to see which company shall pay its loss first; and hastening the payment of the claim without due examination into the justness of the demand, for the sake of gaining popularity as a prompt-paying company, is but offering a premium to incendiarism, and tends largely to increase the number of fires.

In view of the prevalence of this reprehensible practice, the National Board of Underwriters passed the following resolution, viz.:

Resolved: That in all cases of loss, where the claim exceeds five hundred dollars, the members of this board pledge themselves not to anticipate the payment of such losses before the expiration of the sixty days from filing of proofs at the parent office, without the consent of three-fourths of the companies having policies on such property; and in such case only on the usual deduction of interest.

"The necessity for such a resolution is too apparent to require any argument in addition to that urged at the time of its adoption. A large number of companies have already carried it into effect with great profit to themselves.

"Instances are almost daily brought to our notice of hasty adjustments and payments where the lapse of less than half the usual sixty days has revealed the grossest fraud in the amount claimed or in the origin of the fire."

An idea of the *enterprise* of one of our large Western insurance companies, in the way of payment of losses, may be gathered from one of its recent circulars, from which we learn that it paid *fifty-six* losses, amounting in the aggregate to *one hundred and three thousand nine hundred and twenty-seven dollars* and *twenty-five cents*, all within an average of *thirteen* days from the time of the occurrence of the fire, varying from one day, the shortest, to thirty days, the longest. Fortunate company!

Agents should not close any claim by draft on their companies, without special instructions so to do. When so advised, they should draw for the amount of the claim, less the customary deduction for interest, when paid before maturity; for which purpose appropriate blank drafts are usually sent from the parent office. Upon payment of the claim, the policy should be taken up and duly canceled by the insured's *receipt written across the face* for the *gross* sum paid, and forwarded to the parent office at once, as a voucher. In case of partial loss only, the amount paid should be endorsed upon the policy in diminution of the amount remaining insured for the unexpired time and a duplicate of the receipt taken and forwarded to the parent office as a voucher for the payment. (*See forms of Receipts and Endorsements, No.* 7.) These receipts are important as vouchers; more especially the receipt upon the policy by which it is canceled, and should never be omitted. Where the policy has been lost in the fire, or mislaid so that it cannot be found for cancellation upon payment of loss, a receipt in accordance with *form No.* 9 should be taken, in duplicate, and forwarded as the voucher.

Most offices refuse to pay any draft for a loss unless the vouchers for the same are at hand, and very correctly too. Agents may spare themselves the mortification of having their drafts returned dishonored by attending to the proper receipts at the proper time and in the proper manner.

Levy.

Where a stipulation of the policy requires notice of an encumbrance or levy made upon the property insured, such notice is a substantive and material part of the contract.

Where the stipulation is that the policy shall cease upon property insured "should it be levied on or taken into custody under an execution or other proceeding at law or equity," it is held to be valid; but does not apply to a wrongful levy, made upon the property insured as that of another party.

The fact that property is under execution at the time of effecting an insurance will not avoid the policy.

Where insured property burned while in the custody and possession of the sheriff, though on the premises of the insured; held, that the insured was entitled to recover.

A mere notice of levy by the officer charged therewith to the insured, at their store, without taking the property into custody, though good as a levy, will not avoid the policy.

Subrogation

Is an express agreement, that in case of loss to any property covered by insurance, upon which the insured may at the same time have or hold any interest, claim, mortgage or other securities as collateral; or where the insured, from the circumstances of the loss, may be vested at common law, with rights of recovery from other parties, then the insurer shall be *subrogated* to all such interest, claim, mortgage or other securities or rights of recovery of the insured, to an amount equal to that paid for loss under the contract of insurance; and the insured cannot by the execution of any release, after such subrogation, discharge any of the liabilities thus subrogated.

The insured may collect from the insurer before availing himself of the securities held, or the rights of recovery against other parties; in which case the insurer becomes *subrogated* to all such rights as above recited, and can proceed to recover the amount paid, in the name of the insured, the same as the insured could have done; but at the expense of the insurer.

Or the insured may proceed to realize upon the securities, or sue upon his rights of recovery from other parties before making a claim upon the insurer; in which case such claim would be diminished by the amount received from the first-named sources.

If the amount paid for loss under an insurance does not equal the amount of the claims or securities thus subrogated, the insurer, by paying the whole amount of such claims or securities, will be entitled to the whole of such claims or securities and to all of the rights of the insured therein and thereunder.

The above are the generally recognized principles of subrogation. Like all other conditions of insurance, they are subject to modification by contingent circumstances.

Contested Claims.

There is always more or less prejudice against an insurance company which may feel compelled to litigate a claim deemed fraudulent; even juries, misled by the *mis*representations of opposing counsel, are prone to turn a deaf ear to its pleadings; yet no other class of incorporated institutions has so often to deal with sharpers and scoundrels who seem to regard underwriters as fair game for their practice; and whose claims are not unfrequently so exorbitant and glaringly fraudulent as to render resistance a matter of moral obligation as well as of self-preservation. Indeed it has been most appropriately remarked, that

"Within the entire range of mercantile transactions there is probably no contract of more vital importance than that of fire insurance; and yet none receive less attention at the hands of the insured. The policy is seldom if ever read; its conditions are violated almost daily, until a loss occurs; then for the first time, perhaps, the holder comprehends that every word in the document has a meaning; and it is more from chance and good luck than from care and foresight, that the policy has not already become absolutely void. Should any question of its validity arise in this connection, the underwriter is accused before the bar of public opinion, if not in courts of law, of being exacting and technical, and as desirous of avoiding the payment of just claims, while it is the insured who is in fault and not the company. A little timely precaution in reading the policy would have prevented all difficulty and placed the insured in a position to demand indemnity without a question."

Insurance cases differ from ordinary civil suits in presenting many peculiarities not found in ordinary business contracts; and but few legal men, who have not made underwriting a special study, are sufficiently *au-fait* upon these points to present them lucidly to the comprehension of court and jury; hence verdicts are often given and rulings made upon points not really at issue.

Very many contested claims arise from the careless, indefinite manner in which policies are sometimes worded. The insured honestly contending for one construction, while the insurer is equally pertinacious for another and quite different one.

These misunderstandings it is the duty of the adjuster to attempt to harmonize before resorting to the uncertainties of courts of law; and not unfrequently is the underwriter constrained to allow and pay claims which he is morally convinced are unjust, if not fraudulent, rather than commit the interest of his company to the prejudices of a jury. When mere questions of law arise, and the matter can be submitted for the decisions of the courts without the intervention of juries, the underwriter may stand an equal chance with the insured. But until our judges become better underwriters than many of them now prove themselves to be by their decisions, insurance companies will find it to their interests to continue to compromise doubtful and unpromising claims rather than run the risk of heavy court and lawyers' fees in addition to the payment of the claim at the termination of a vexaticus lawsuit.

Garnishee

As connected with the insurance contract, is the same as at common law process. The *principal points* are as follows:

An unadjusted or unliquidated claim for loss upon a policy of insurance against fire is subject to attachment in the hands of the insurer.

Where a policy has been assigned after loss, in order to *garnishee* the insurer, notice must be given in season to enable such insurer to show such an assignment in his answer, in case of suit, or before judgment is obtained. But, having received such notice, if the insurer neglect to show it in defence, he cannot resist a subsequent claim of an assignee; but having shown such notice of assignment, he cannot be charged as garnishee.

Any assignment of the claim by the insured, after service of the garnishee upon the insurer, does not affect the attachment or relieve the insurer from liability under it.

Arbitration.

The conditions of all policies provide for the reference of matters of disagreement in the adjustment of loss to *arbitrators*, disinterested persons, who are usually chosen one by each party, and those thus selected choose an umpire or third person. The Boston form of policy provides for this selection of arbitrators in the following peculiar manner, viz.: one to be chosen by each party out of three to be named by the other party, and the third by the two so chosen.

Parties may make it a condition precedent to bringing an action that the amount, time of payment, or any other matter which does not go to the root of the action, shall be settled by arbitration.

Where the payment of a claim is contested by the insurer without first seeking to avail himself of the right given by the condition or agreement to refer to arbitrators, he will be considered as having waived such right to refer.

An agreement to refer to arbitrators cannot oust the court; but if there shall have been any such reference, or any such was pending, it might be a bar.

While the courts cannot be ousted of their jurisdiction by any reference to arbitration, neither can they compel parties to submit to a reference during the progress of a suit, when one of the parties has declined to submit to such arbitration.

Waiver.

Waiver, in law, is the act of not insisting upon some right, claim or privilege, secured, as in an insurance contract, by the conditions of the policy to the insurer.

Such waiver may be by direct intention, or by implication derived from the act of the insurer or his agent, or from a failure to act by him, at the proper time. In either case it is final and cannot be recalled. Hence agents cannot be too careful not to prejudice the rights of their companies by any undue or unnecessary concessions.

Alienation.

If insured property be sold, the policy is void, unless transferred with the property, by consent of the insurers. If sold in part only, the policy will apply to the portion unsold, unless expressly provided for otherwise by the policy.

Conveyance of property to trustees for benefit of the creditors of insured, alienates the policy.

Mortgage of property insured is not alienation, unless made so by the conditions of the policy.

Transfer of insured property to an assignee, under a decree of bankruptcy is alienation.

An agreement to sell, but where deed is not made, nor purchase money paid, does not divest the insured of his interest in the property. But where the insured gives a deed, and receives an agreement for reconveyance, it is held to be an alienation.

Descent of title to heirs is not alienation.

When change of title voids a policy by its conditions, a division of partnership goods before loss, each partner taking a portion, is change of title and consequent alienation.

Loss on Buildings.

In cases of claims for loss or damage on buildings, the adjustment is much less complicated, requiring only satisfactory evidence of actual ownership of the interest insured, the value of such interest, and the cash value of the loss or damage sustained by the premises.

The insurable interest of the insured, if sole, is readily ascertained; if not sole, as already stated, it may require considerable time and patience to ascertain what such interest may be, and its value.

When a building is totally destroyed by fire, the cost of rebuilding does not furnish the true measure of damage. Under such ruling the amount recovered would exceed a fair indemnity, which is not the intention of the contract of insurance. The insurer is only bound to reinstate the building as nearly as possible in the same condition as before the fire.

There is no uniform rule applicable in such cases; the custom, in marine insurance, of deducting one-third of the price of new as the value of the old, or as it is technically expressed, "of one-third new for old," is not recognized in fire insurance.

In the absence of other and more equitable means, the cash value of the loss or damage can be most satisfactorily reached by a regular bid or estimate of one or more responsible, practical builders, who may be acquainted with the premises damaged, or destroyed. (*See Builder's Estimate and Agreement.*)

Rebuilding.

By the conditions of most policies, the underwriter has the right of *reinstatement* in lieu of paying for the building, should he so elect, by giving notice of his intention so to do within a specified time; and should the insured proceed to rebuild without waiting for the expiration of the time specified within which the insurer was entitled to make the election to re-instate the building, no action will lie upon the policy to compel the payment of the loss in any other manner.

The insurer having elected to re-instate the building in accordance with the terms of the policy, cannot be required to pay in any other manner: such election makes the insurance policy a building contract.

That other companies had insurance on the building, and that the insurer's policy alone was not sufficient in amount to reinstate the building, make no difference with the fact, as it is such insurer's business to procure the co-operation of his co-insurers, and to see the building repaired or restored, in order to remove his liability under the policy.

In cases where the loss or damage may be small, the "bid" or estimate will scarcely be needed; but in heavy losses this "form" should be submitted to two or more responsible builders to estimate upon and return to the company, with the understanding that in case one of the bids is not accepted, they will be paid for their trouble in making them.

When the amount covered by the policy is disproportionately small, as compared with the value of the property destroyed, a builder's "valuation" of the building may answer.

Slight damages to buildings grow worse by delay; they should be repaired at once by the agent; or the amount necessary for such repairs should be paid to the owner at his option.

Forms.

Forms

Ordinarily used in the adjustment of claims for loss or damage by fire, and referred to in the preceding pages, viz.:

PRELIMINARY PROOF.

APPRAISER'S BLANKS.

BUILDER'S ESTIMATE AND AGREEMENT.

FORM OF ENDORSEMENT, CANCELLATIONS AND RECEIPTS *for the payment of losses, total or partial.*

FORM OF DRAFT UPON THE COMPANY.

These blanks have been carefully prepared with a view to facilitate the settlement of *honest* losses. These, or similar ones, are furnished by the companies for the use of claimants through the agents and adjusters, under the restrictions given on page 56.

Preliminary Proofs.

This form of blank is intended to embrace all the requirements of the "condition" of the policy relative to a claim for loss; setting forth in a condensed form, though in general terms only, the facts counted upon to substantiate the claim, but relying upon the "vouchers" therein referred to, and made a portion thereof, for the details; these vouchers have been fully explained in the preceding pages.

Inasmuch as the *preliminary proof* is but a recapitulation of the results of the facts and figures of the several "vouchers," it is scarcely necessary to say that the blank spaces in the printed form should *not* be filled until such results have been satisfactorily ascertained.

In the following examples the customary blank spaces are filled in *italics*.

[Form 1.]

Form of Preliminary Proof.

To the.....Fire Insurance Company of.....

State of *New Hampshire*,
County of *Strafford*, } ss.

Be it known, that on this [30*th*] day of *January*, A. D. 186[7], before me, *Thomas Jefferson*, a *notary public*, legally qualified, and residing in the *town* of *Morrison*, in the county and state aforesaid, personally appeared *Thomas Macauley, Jonas Thompson and William Evans, composing the firm of Macauley, Thompson & Co.*, who being first duly sworn, according to law, depose[*s*] and say[*s*]: That the.....Fire Insurance Company, of the City of....., through its agency at *Morrison*, in the State of *New Hampshire*, did on the [26*th*] day of *April*, A. D. 186[5], issue to *Macauley, Thompson & Co.* their policy of insurance, No. [67], the written body of which, with its immediate context, is as below specified; said insurance terminating on the [26*th*] day of *April*, 186[6], at noon, viz.:

No. [67]. The.....Fire Insurance Company, of the City of.....
....., do hereby insure *Macauley, Thompson & Co.*, of *Morrison, N. H.*, against loss or damage by fire to the amount of *twenty-five hundred* dollars.

(The written portion of the policy to be here given in full, with copies of all endorsements, assignments or transfers consented to by the company.)

Which said policy was subsequently continued in force by renewal No. [97], until the [26*th*] day of *April*, A. D. 186[7], at noon.

That in addition to the amount covered by said policy, there was [*no*] other insurance made thereon to the amount of *twenty-five hundred* dollars, as is particularly specified in the accompanying schedule marked A.

That on the [19*th*] day of *January*, A. D. 186[7], a fire occurred by which the property so insured was damaged to the amount of *three thousand seven hundred and fifty* dollars actual cash value, as set forth in the statements and the several schedules and papers hereunto annexed and forming a part of this proof, which *these* deponent*s* declare[*s*] to be a just, true and faithful account of the loss and damage thereon, and the circumstances concerning the same, so far as known to *them*.

That the actual cash value of the property so insured, immediately preceding the fire, was *eight thousand nine hundred and seventy-five* 27-100 dollars, as will appear by the annexed schedule, marked *B*, containing a full and accurate description of all the property so insured.

That the property so insured belonged, at the time of the fire, solely to *Macauley, Thompson & Co., the insured*, and there was no other party interested therein to the amount of anything.

That at the time of said fire, the building insured or containing the property so damaged or destroyed, was occupied in its several parts by the parties hereinafter named, and for the following purposes (there being *no* change in the occupancy of the premises since the insurance was effected), to wit: *first floor by the insured as a grocery store; the second floor by Elias Thomas, James Gray, Elbridge Knight, as lawyers' offices*, and for no other purpose whatever.

That the fire originated, *from causes unknown, in an adjoining building.* And the said deponent*s* further declare[*s*]: That the said fire did not originate by any act, design or procurement, on *their* part, nor on the part of any one having any interest in the said polic*ies* of insurance: nor in consequence of any fraud or evil practice done or suffered by *them*, and that nothing has been done by or with *their* privity or consent to render void the polic*ies* aforesaid; and that *they* will furnish such additional information concerning said insured property, the damage thereto, and the insurance thereon, as shall be required by said company.

And the insured claim[*s*] of the ..... FIRE INSURANCE COMPANY, by reason of said loss and damage, and their policy of insurance, the sum of *eighteen hundred and seventy-five* dollars, as is more fully set forth in the annexed schedule marked *B*.

IN TESTIMONY WHEREOF, the said deponent*s* have hereunto set *their* hand*s* and seal*s*, the day and year first hereinbefore mentioned.

MACAULEY, THOMPSON & CO.,
By THOMAS MACAULEY.

Subscribed and sworn before me, this [80*th*] day of *January*, 186[7].

THOMAS JEFFERSON, Notary Public.

Magistrate's Certificate.

It has been customary to append hereto the certificate of a magistrate or notary public residing nearest, or "most contiguous" to the property burned, and consequently supposed to be cognizant of the facts set forth in the preliminary proofs, stating his belief in the honesty of the insured, and his knowledge of the amount of loss sustained by him; but, as in ninety-nine cases out of every hundred, such designated magistrate or notary is totally ignorant of the facts which he is thus called upon to certify to, and only signs such certificate as a matter of course for the accommodation of a friend, or to earn his fee, its requirement has been omitted by many companies from the conditions of their policies as of no value whatever, inasmuch as no penalty attaches to such magistrate or notary in case of fraud or error in the facts set forth in their certificate.

The custom comes from the old English form of policies, where the certificate of the nearest minister of the gospel was made necessary under similar circumstances.

The new form of National Board policy retains the condition for this certificate; but should the draft of a law in relation to fraudulent swearing in proofs of loss, which has been presented by the National Board to be offered to the several state legislatures, wherein this very certificate is particularized, be adopted by any of them, it will be likely to trouble the insured somewhat to find, in those states, a notary or magistrate willing to assume the responsibility of making the required certificate, with that law staring him in the face.

Where this condition is retained in the policy it is as absolutely essential to be complied with as any of the other covenants; and a failure to obtain such a certificate would be fatal to the policy.

The only points likely to arise in this connection, are as to whom shall be considered as the "most contiguous" magistrate? and what shall the insured do if the "most contiguous" gentleman refuses to certify?

The form of the certificate is as follows; the customary blanks being filled in *italics*, *viz.:*

State of *New York*, }
County of *Orleans*, } ss.

I, *Thomas Jefferson*, a *magistrate* (*or notary public*), residing in *Madison*, most contiguous to the property hereinbefore described, hereby certify that I am not concerned in the loss or claim above set forth, either as creditor or otherwise, or related to the insured or sufferers; that I have examined the circumstances attending the fire, and damage as alleged, and that I am well acquainted with the character and circumstances of the insured, and do verily believe that *they* have by misfortune, and without fraud or evil practice, sustained by the said described fire, loss and damage on the property insured to the amount of *eighteen hundred and seventy-five* dollars, the sum stated in the foregoing affidavit of loss.

{SEAL.} In Testimony Whereof, I have hereunto set my hand and official seal, this [30*th*] day of *January*, A. D. 186[7.]

THOMAS JEFFERSON,
Justice of the Peace.

Schedule A.

Additional Insurance

Referred to in the foregoing preliminary proofs, giving the name of each company; date and expiration of policy; rate of premium, and the written portion of each policy, with all endorsements, assignments, transfers or renewals thereon.

N. B. When all policies are exactly concurrent, the written portions of but one need be given; the words "*concurrent with the above*" will suffice for the others. If not exactly concurrent, however, each differing one must be given in full.

Policy of the Good Intent Insurance Co. of Minerva, New York, numbered 54:

Concurent in every particular with the above-recited policy of the Goshen Fire Insurance Company.

Schedule B

Is the statement as given in the preliminary proofs similar to those on pages 71, 72, 78 and 79.

A Simple Form of Preliminary Proof.

To the ..... Insurance Company of .....

By your policy of insurance issued to ..... at your agency at ..... State of ..... (and continued by renewal No. ..... to the .....th day of .....186....), a part of which is in the following words and figures, viz.:

No. ..... Dated ..... 186.....

Against loss and damage by fire to the amount of ..... dollars.

(Here follow the exact words of the written portion of the policy.)

There was other insurance on the property as follows:

(Here give the amount of other insurance, if any, on each item of property, if more than one, and the name of the company, when concurrent; if not concurrent, the written part of each policy must be copied in full. See schedule A.*)

A fire occurred on the ..... day of ..... 186...., by which loss and damage was sustained by the property insured as set forth in detail, and which was the actual cash value at the time of the fire. See schedule B, hereto attached, to the amount of ..... dollars.

And ..... claim of your company ..... dollars.

The whole value of the property, at the time of the fire, was ..... dollars, as set forth in schedule B*, hereto attached.

The property belonged to ..... and no other party or person had any interest therein.

There was no other insurance than hereinbefore set forth; nor was there any change in the occupancy of the premises since the insurance was effected, except as hereinafter stated, viz.: .....

The fire originated .....

Any other information that may be required will be furnished on call.

Witness ..... hand ..... at ..... this ..... day of ..... 186....

.....

Personally appeared ..... signer of the foregoing statement, who made oath to the truth of the same, this ..... day of ..... 186....

Before me,

{5 cent Stamp.}

.....

J. P.

* The schedules *A* and *B* above referred to are the same as given for the other form of preliminary proof.

Appraisers' Blanks.

These blanks are very important to the underwriter; and being conclusive as to the *measure of damage* sustained by the articles submitted for appraisement, the assured's claim for damage thereon is limited, within the terms of the policy, to the sum named therein.

First: SUBMISSION TO APPRAISERS: This is the agreement of the parties in interest to submit the matter of damage to certain parties for estimate and appraisement. It should be signed by the claimant and the company, by its agent.

Second: APPRAISERS' DECLARATION, under oath, that they will act impartially, and to the best of their skill and judgment, in the appraisement of damage to the articles submitted to them. To be signed by all of the appraisers.

Third: SCHEDULE OR INVENTORY of articles appraised; showing the estimated damage to the articles singly and in the aggregate. To be signed by the appraisers at the close of the inventory. *This last is important.*

[FORM 2.]

AGREEMENT FOR SUBMISSION TO APPRAISERS.

IT IS HEREBY AGREED, by_____, of the first part, and the_____ FIRE INSURANCE COMPANY, of the City of_____, of the second part, that_____ and_____(together with a third person to be chosen by them, if necessary) shall estimate and appraise, at the true cash value thereof, the damage caused by *fire* (*water*), to such property belonging to_____as may be specified in the accompanying schedule; which estimate and appraisement submitted by them, or any two of them, in writing, as to the amount of such damage, shall be binding upon both parties. It is understood that this appointment has no reference to any questions or matters of difference within the terms and conditions of the insurance, and shall be binding on the parties hereto only so far as regards the actual cash value of, or damage to such property, covered by policy No._____, of the agency of said Company, at_____, as may have been saved in a damaged condition, and submitted to the above-named appointees for appraisement.

WITNESS our hands at_____, this_____day of_____A. D. 186____

_____

{5 Cent Stamp}

_____FIRE INS. CO.,

By_____Agt.

[Form 3.]

Declaration of Appraisers.

State of.....
County of..... } ss.

We, the undersigned appraisers, do solemnly swear that we will act with strict impartiality in making an estimate and appraisement of the actual damage sustained by the property of....., insured by the.....Fire Insurance Company of the City of....., and saved in a damaged condition; and that we will, to the best of our knowledge, skill, and judgment, return a true, just, and conscientious appraisement and estimate of damage on the property submitted to us.

Witness our hands, this.....day of....., A. D. 186.....

{5 Cent Stamp.}

.....

.....

.....

Subscribed and sworn before me, this.....day of.....186.....

.....*J. P.* (or *N. P.*)

[Form 4.]

Appraiser's Schedule, A.

Schedule of property of....., damaged by *fire* (*water*), on the..... day of....., A. D. 186....., at....., the damage on which was assessed by....., and....., and....., Appraisers, on the.....day of....., A.D. 186.....

☞ *The damaged property must at once be placed in as good condition as possible by the owner, duly assorted and arranged according to the several kinds; separating the damaged from the sound.* ☜

Articles without apparent or known damage are to be considered uninjured, and should not be included in this schedule. If any such should be found herein, the appraisers will enter their cash value *as sound*, in the first columns, and mark them "*not damaged*" in the second columns. This blank must be properly filled out by the owner, with a list of the *damaged articles*, showing the quantity, kind, and quality, but not the value of each, which will much facilitate the labors of the appraisers. The appraisers will determine the actual cash value of each article as sound, and assess the

damage at a definite sum per yard, dozen, pound, bushel, or gallon, as the case may require, and enter the same in the appropriate columns.

Goods damaged by *removal* only, should be specified separately.

(Revenue Stamp, 5 cents for each sheet of paper.)

Quantity.	Names of Articles and Marks.	Actual Cash Value as Sound.			Appraised Damages.		
		Doz. Yd.	Gall.	Aggregate.	Doz. Yd.	Gall.	Aggregate.

(*Signed by Appraisers, at the end*).

Builder's Estimate and Agreement.

This is not a contract proper, but a simple proposition of the builder that he will, under certain provisions, contract to rebuild or repair the premises indicated, plans of and specifications for which are added, setting forth the items of the estimate; and in evidence of his ability to fulfil the requirement of the contract, should one be made, he gives the certificate of two or more prominent, worthy citizens of his town, vouching for his responsibility.

Should the proposal be accepted by the company a regular contract will be executed. Should the bid not be accepted by either the company or the assured, a reasonable compensation should be allowed for the time and labor bestowed upon the plan and specifications.

Under the new form of National Board policy, it is made the duty of the assured to furnish plans and specifications, if called for. (*See Loss on Buildings.*)

This form of blank, properly filled, and signed by responsible parties, becomes proof conclusive as to the extent of damage or loss to the premises insured. The amount named therein is the limit of the company's liability thereon, within the terms of the policy. In case a lawsuit should result from the claim, it is a strong point in favor of the company, and one which will be much strengthened by the certificate of two or more fellow citizens of the builder as to his ability to make good the stipulations of his estimate and agreement.

Too much looseness in the matter of these forms has been permitted, in view of their importance to the insurer. Their production should always be insisted upon as a substantive and integral portion of the proofs.

The *italics* represent the blank spaces in the printed form.

[FORM 5.]

FORM OF BUILDER'S ESTIMATE AND AGREEMENT.

To.....FIRE INSURANCE COMPANY OF THE CITY OF.....

The undersigned, (*a*) practical builders, residing at *Brownsville*, in the state of *Pennsylvania*, and well acquainted with the *brick* (*frame*) building formerly occupied by *Jones, Brown & Smith*, of *Brownsville*, in the state of *Pennsylvania*, as a *store* (*dwelling*) (*warehouse*), which was *destroyed* (*damaged*) by *fire* (*water*), on the [30*th*] day of *January*, A. D. 186[6], hereby agree(*s*) to contract with the.....FIRE INSURANCE COMPANY, of the City of.....or its assigns, for *rebuilding* (*repairing*) the same within *sixty* days after such contract shall have been duly executed, in as good style and finish, and to render the same in like good condition as previous to the fire, and upon the same plan as the original building, in accordance with the plans and specifications herewith submitted, for the sum of *nine thousand nine hundred and ninety dollars;* including the right to use, in rebuilding, such of the sound materials of the original building as may have been saved from the fire. The money to be considered due and payable to *us* (*me*) upon the completion and acceptance of the building by the said company, or its assigns, and not before.

{ 5 Cent Stamp. }

WITNESS *our* (*my*) hand*s* and seal*s* at *Brownsville, Pa.*, this [20*th*] day of *February*, A. D. 186[6].

NICHOLAS TIDEOUT.
STUYVESANT GILCHRIST.

In presence of
JOHN DOE.
RICHARD ROE.

CERTIFICATE OF RESPONSIBILITY OF THE CONTRACTORS.

The undersigned, residents of *Brownsville, Pa.*, are well acquainted with the above-named *Nicholas Tideout and Stuyvesant Gilchrist*, and know *them* (*him*) to be (*a*) practical and skillful workmen(*an*), and amply responsible pecuniarily for any contracts *they* (*he*) may undertake.

WITNESS *our* (*my*) hands at *Brownsville, Pa.*, this [21*st*] day of *February*, A. D. 186[6].

SAMPSON JONES.
FABIUS LONGWORTHY.

[Form 6

Plans and Specifications

REFERRED TO IN THE FOREGOING ESTIMATE AND AGREEMENT.

Description of Building Burned, viz.:

Size on the Ground, Main Building,.....

" " " Wing or Ell,.....

Material: Brick or Frame,.....

Hight above the Ground,.....

Number of Stories: Main Building,..... Wing,.....

Roof: Tin, Slate, Composition, Shingles,.....

How Finished:.....

Condition as to Repairs,.....

Value of Material Saved, Aggregate, $.....

Materials Necessary for Reconstruction, viz.:

Lumber:.....ft. Timber,.....ft. Siding,.....ft. Flooring,.....ft.

Shingles:.....Doors:.....Blinds:.....

Mason's Work: Brick,.....per M., laid.

Plastering:.....sq. yards,.....pr. yard.

Painting and Glazing:.....

Hardware: Locks,.....Bolts,.....Screws,.....

Nails,.....Butts,.....

Roofing: Squares Tin,..... Slate,..... Composition,.....

Labor:.....

[Form 7.]

Form of Endorsement

UPON POLICY FOR PAYMENT OF PARTIAL LOSS.

Received.....dollars, in full of all demands for loss and damage under this policy, by fire, on the.....day of..... 186 ; and the same is hereby canceled to that amount, leaving the sum of..... .....dollars, now pending.

$..... (Signed by the assured.).....

Dated.....186

{2 cent Stamp.}

[Form 8.]

Form of Receipt,

IN DUPLICATE.

The following may be used; one to be attached to the policy, the other sent to the parent office as a voucher, viz.:

Received of the North American Fire Insurance Company, of the City of New York,.....dollars, in full of all claims or demands for loss and damage by fire on the.....day of....., 186 , under their policy No....., issued at.....agency; and in consideration thereof said policy is hereby canceled to that amount, leaving the sum of..... dollars, now pending.

$..... (Signed by the assured.).....

Dated.....186

{2 cent Stamp.}

[Form 9.]

Form of Receipt for Total Loss

WHERE THE POLICY IS BURNED OR LOST.

Received of the North American Fire Insurance Company, of the City of New York,.....dollars, in full of all claims or demands for loss or damage by fire, on the.....day of.....186 , under their policy No.....issued at.....agency; in consideration of which sum the said company is hereby forever released and discharged from all liability thereunder. And.....hereby agree to protect and forever defend the said company against all persons or claims whatsoever on account of said policy, the same having been burned, lost or mislaid.

$..... (Signed by the assured.).....

Dated.....186

{7 cent Stamp.}

[Form 10.]

Form of Cancellation of Policy

FOR PAYMENT OF TOTAL LOSS.

TO BE WRITTEN UPON THE POLICY.

Received .....dollars, in full of all claims or demands for total loss by fire, under this policy, on the .....day of ..... 186 , in consideration of which sum this policy is hereby canceled and surrendered to the company.

$..... (Signed by the assured.).....

Dated..... 186

{2 cent Stamp.}

[Form 11.]

Form of Draft and Receipt

COMBINED,

For the payment of losses, total or partial, to be duly filled and delivered to the claimant upon his executing the proper corresponding receipt therefor *upon* the policy, in accordance with one of the preceding forms, viz.:

Agency of the NORTH AMERICAN FIRE INS. CO.,
of the City of New York.

$.....

At..... 186

Pay to the order of.....
.....dollars, being in full of all claims and demands against this company, for loss or damage by fire, on the.....day of.....186 , under policy No.....of their agency at.....

To the North American Fire Ins. Co.
No. 114 Broadway, N. Y.

.....
Agent.

{2 cent Stamp.}

THE INSURANCE MONITOR

AND

WALL STREET REVIEW.

PUBLISHED MONTHLY, AT 14 & 16 WALL STREET, N. Y.

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